[Cite as *State v. Fenderson*, 2010-Ohio-2240.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- PRESTON FENDERSON, JR. Defendant-Appellant	JUDGES: Hon. Julie A. Edwards, P. J. Hon. William B. Hoffman, J. Hon. John W. Wise, J. Case No. 09 CA 64 O P I N I O N
CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case Nos. 07 CR 562D and 07 DR 563D
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 20, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JAMES J. MAYER, JR. PROSECUTING ATTORNEY KIRSTEN L. PSCHOLKA-GARTNER ASSISTANT PROSECUTOR 38 South Park Street Mansfield, Ohio 44902	DALE M. MUSILLI 105 Sturges Avenue Mansfield, Ohio 44903

Wise, J.

{¶1} Defendant-appellant Preston Fenderson, Jr. appeals his conviction on one count of murder entered in the Richland County Court of Common Pleas following a jury trial.

{¶2} Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On July 12, 2007, Appellant was indicted by the Richland County Grand Jury for one count of murder in case number 2007-CR-563 for the death of Larry Gutshall on or about May 3, 2007.

{¶4} Appellant was also indicted on one count of burglary and one count of misdemeanor theft in case number 2007-CR-562. These charges related to his unauthorized entry into Cynthia Gainey's apartment and theft of Roy Wagaman's boots and baseball cap on or about May 3, 2007.

{¶5} These charges arose from the following events:

{¶6} On Thursday, May 3, 2007, Roy Wagaman was spending the night with his girlfriend, Cynthia Gainey, who lived in apartment 7 of the Dalton Place Apartments, a residential facility run by the Center for individuals with mental illness, drug or alcohol addiction, or developmental disabilities. (T. at 197). Roy was sleeping on the living room couch when Appellant Preston Fenderson, Jr. entered the apartment. Roy woke up but was too scared to say anything and pretended to be asleep. He watched as Appellant took his boots and baseball cap and then left the apartment. (T. at 197-199).

{¶7} Appellant, Preston Fenderson, Jr. was the apartment manager for the building. As the apartment manager, Appellant was in charge of sweeping and mopping

the floors, checking with the other residents to see if they had any maintenance issues which needed to be reported, and locking the outside doors at night. (T. at 195, 245, 361-363). Appellant also had a set of master keys, which could be used to enter any apartment in the building.

{¶8} When Wagaman encountered Appellant in the hallway the next morning, he acted like he did not know what had happened, and asked Appellant if he had seen his boots. (T. at 199). Wagaman then went inside his apartment to use the bathroom. When he came back out, he saw Appellant in the hallway leaving his boots outside his apartment door. (T. at 199-200). Appellant then told Wagaman that he found the boots outside. (T. at 200). Another resident, Danny Baker, also saw Appellant with Wagaman's boots on the morning of Friday, May 4, 2007. (T. at 244).

{¶9} Because he did not want to get Appellant in trouble, Wagaman did not report the incident to the police. Instead, he planned to tell his caseworker at his next appointment. However, before his next appointment, Larry Gutshall was found dead in his apartment on Monday May 7, 2007. Wagaman therefore told the police about the incident with Appellant taking his boots.

{¶10} When Larry Gutshall did not show up for an appointment with his therapist at the Center, his therapist was concerned because it was unusual for Larry to miss his appointments. He contacted Vivian Winters, a supervisor at the Center, and they decided to go to Gutshall's apartment to check on him and make sure he was okay. (T. at 289). Gutshall's apartment door was locked, and he did not answer their repeated knocks. (T. at 289-290). Eventually, they located the building's maintenance man, Lester Bunker, and he used a key to let them into Gutshall's apartment. (T. at 290).

When Ms. Winters entered the apartment, she saw Gutshall lying in the bed. She called his name, and he did not respond. When she got closer to the bed, she could see that he was dead. They immediately left the apartment and called 911. (T. at 290).

{¶11} When the police arrived, they found Larry Gutshall lying in his bed with the covers pulled up over his body and a pillow covering his head. When the pillow was removed, the first responders initially thought the cause of death was a self-inflicted gunshot wound to the head because of the massive amount of damage to the head and face. (T. at 301-302, 346-347, 425-426, 500). However, they were unable to locate a gun. (T. at 302-303, 347, 426-427, 500-501). When the sheet was removed, officers noticed stab wounds to the neck and chest area. A closer inspection of the victim's head and face revealed that he had a broken jaw and his skull was caved in by blunt-force trauma. (T. at 300, 303, 347, 501-502).

{¶12} A search of the bedroom revealed a knife hidden underneath some jeans in a laundry basket in the closet. (T. at 308-309, 429-431. 503-504). When the rest of the apartment was searched, the police also located a dumbbell with blood on it hidden between a wheelchair and a recliner and covered with a pillow. (T. at 311-312, 337-338, 348-350, 432). This dumbbell had been used to cause the massive head injuries that killed Larry Gutshall. (T. at 566).

{¶13} From the level of decomposition, the forensic pathologist estimated that Larry Gutshall had been dead for approximately two to four days before his body was found. (T. at 567-568). This would place the date of death between May 3, 2007 and May 5, 2007. A Meijer's receipt found in Gutshall's wallet confirms that he was still alive on Thursday, May 3, 2007, at 11:33 a.m. (T. at 488-489). Richard Minor, another

resident of the Dalton Place Apartments, indicated that he thought he recalled seeing Gutshall getting his mail on the morning of Sunday, May 6, 2007. (T. at 572-574).

{¶14} After Gutshall's body was discovered, the police began interviewing neighbors to determine if anyone saw or heard anything suspicious around the time of the murder. When they interviewed Roy Wagaman, he reported that he heard shouting and arguing coming from Gutshall's apartment at around seven or eight o'clock in the morning on Thursday, May 3, 2007. (T. at 203). He stated that he specifically heard Gutshall yelling "No. No." and "I know you underneath there." (T. at 202). When Wagaman went over to Gutshall's apartment to check on him, the door was locked and he could not get in. (T. at 202). Wagaman reported that the next day, after Appellant returned his boots, he saw Appellant get on the 10:20 a.m. bus to Cincinnati. (T. at 203).

{¶15} Tom Quinlan, another client of the Center who was acquainted with Appellant, also reported seeing Appellant at the bus station with several duffel bags on Friday, May 4, 2007. He indicated that Appellant acted like something was bothering him, or like he was depressed about something. (T. at 388-389). When Tom asked him if he was going on vacation, Appellant said something about going to Columbus, (T. at 389).

{¶16} After talking to Wagaman and Quinlan, the police spoke to Dennis and Shelly Rock, the managers of the Greyhound bus station in Mansfield, Ohio. The Rocks verified that Appellant had purchased a one-way ticket to Columbus, Ohio, on Friday, May 4, 2007. (T. at 402). Mr. Rock indicated that he thought this was unusual for the Appellant, who routinely purchased round-trip tickets to Cleveland once a month to visit

his mother. (T. at 400-401). Mr. Rock stated that on that day he noticed that Appellant was sweating profusely and was acting nervous. He said Appellant kept looking around like he was expecting someone to walk into the station. (T. at 402-403, 414). Mr. Rock stated that he tried to ask Appellant about why he was going to Columbus instead of Cleveland, but Appellant would not answer him. (T. at 403, 407).

{¶17} The above reports conflicted with a statement made by Robert Jeffers who stated that he thought he remembered seeing Appellant walking in Central Park around 4:30 p.m. on Saturday, May 5, 2007. Mr. Jeffers indicated that Appellant sort of cowered or looked away when he saw him like he did not want to be seen. (T. at 374-375, 377-378).

{¶18} Based upon the reports that Appellant had left town around the time of the murder and the fact that he had a key to enter Gutshall's apartment and lock the door behind him, the police considered him to be a suspect in Gutshall's murder.

{¶19} Appellant's whereabouts remained unknown until June 11, 2007. On that date, Detective Chad Brubaker received a phone call from Appellant's mother, Maddie Fenderson. She advised Brubaker that she had received a telephone call from Appellant telling her that he was in Kendron Psychiatric Hospital in Los Angeles, California. (T. at 434). Based on this information, Detective Brubaker secured a governor's warrant to extradite Appellant back to Mansfield, Ohio.

{¶20} On June 28, 2007, Detectives Bosko and Brubaker, and Detective Sergeant Gus Fronz flew out to California, took custody of Appellant, and drove him back to Mansfield, Ohio, to face charges for the murder of Larry Gutshall. (T. at 435).

{¶21} The Detectives found Appellant to be alert, oriented, and cooperative during the trip back to Ohio. They stated that he engaged in rational conversation with them about various subjects but that when asked about the murder of Gutshall, he became quiet. (T. at 436-437, 462-463, 475-477).

{¶22} Upon Appellant's return to Mansfield, Ohio, buccal swabs were taken from him for DNA comparison with items from the crime scene. A sample taken from the knife handle revealed a mixture of Gutshall's DNA and a DNA profile that is consistent with Appellant.

{¶23} On September 17, 2007, Appellant entered a plea of Not Guilty by Reason of Insanity to all charges.

{¶24} At the request of defense counsel, Appellant was evaluated by a forensic expert to determine his competency to stand trial. The expert submitted a report to the trial court dated October 19, 2007, indicating that Appellant was incompetent to stand trial at that time but could likely be restored to competence. As a result, the trial court declared him incompetent to stand trial on November 26, 2007, and remanded him to Heartland Behavioral Health for competency restoration treatment.

{¶25} On March 18, 2009, the trial court found that Appellant was restored to competence based upon a written report and testimony from his treating psychologist, Dr. Philip Seibel. Thereafter, the trial court joined the offenses in case numbers 2007-CR-562 and 2007-CR-563, and set Appellant's case for jury trial.

{¶26} Appellant's trial commenced on March 26, 2009, and ended on April 2, 2009.

{¶27} During the trial, the State called Roy Wagaman, Danny Baker, Tom Quinlan and Richard Minor, clients of the Center who were acquainted with the Appellant and Larry Gutshall; Center employees, Vivian Winters and Robert Jeffers; Dennis and Shelby Rock, the managers of the Mansfield Greyhound bus station; Mansfield Police Officers William Bushong, Gordon Wendling, Eric Bosko, and Chad Brubaker; Crime Lab personnel Cindy Reed and Anthony Tambasco; Coroner's Assistant Paul Jones; and Forensic Pathologist Dr. Lyong An.

{¶28} After the State rested, the defense re-called Vivian Winters. The defense also called psychologist Dr. Daniel Hrinko, who theorized that Appellant was insane at the time of the offenses at issue in this case. Thereafter, the State called Dr. Philip Seibel on rebuttal.

{¶29} The jury began deliberating on April 1, 2009, and reached a verdict on April 2, 2009. Appellant was found guilty of murder, and not guilty of the burglary and theft counts.

{¶30} As a result of his conviction, the trial court sentenced Appellant to fifteen (15) years to life in prison.

{¶31} Defendant-appellant now appeals his conviction, raising the following sole assignment of error:

ASSIGNMENT OF ERROR

{¶32} "I. THE CONVICTION OF MURDER IS AGAINST THE MANIFEST WEIGHT OF EVIDENCE THAT THE AFFIRMATIVE DEFENSE OF "NOT GUILTY BY REASON OF INSANITY" WAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE AND NOT REBUTTED."

I.

{¶33} In Appellant's sole assignment of error, he argues that his conviction was against the manifest weight of the evidence. We disagree.

{¶34} 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, 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, paragraph one of the syllabus.

{¶35} 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, at ¶ 35.

{¶36} Insanity is an affirmative defense, placing the burden on the accused to establish the defense by a preponderance of the evidence. R.C. §2901.05(A); *State v. Brown* (1983), 5 Ohio St .3d 133, *State v. Taylor,* 98 Ohio St.3d 27, 2002-Ohio-7017.

{¶37} The Ohio Revised Code provides the standard courts must follow when determining whether a defendant has established an insanity defense: "[a] person is 'not guilty by reason of insanity' relative to a charge of an offense only if the person proves *** that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts." R.C.

§2901.01(A)(14). "The weight to be given the evidence and the credibility of the witnesses who provide opinions regarding the defense of insanity in a criminal proceeding are primarily for the trier of fact." *State v. Curry* (1989), 45 Ohio St.3d 109.

{¶38} In the present case, with regard to Appellant's defense of insanity, the jury had the testimony of Appellant's witness, Dr. Daniel Hrinko and state's witnesses Vivian Winters and Dr. Philip Seibel.

{¶39} The testimony of Vivian Winters was presented during the State's case-in-chief. Winters is a supervisor at the Center for Individual and Family Services who was in charge of the drug and alcohol counseling teams, the crisis team, and the residential teams within the agency. (T. at 267, 273-274). Winters testified that she worked with Appellant from late 2004 or 2005, until days before Gutshall's murder. (T. at 282).

{¶40} Winters testified that in either late 2004 or early 2005, Appellant was referred by the mental health court to a dual diagnosis treatment group that she was facilitating. She stated that Appellant was diagnosed with paranoid schizophrenia, and had admitted to using alcohol, marijuana, and cocaine. (T. at 282-283). As a part of the program, Appellant was taught about the need for treatment, the need to take his medication, and the need to avoid drugs and alcohol. He was also taught to recognize the warning signs or symptoms of his illness, and coping skills to deal with those symptoms, such as reaching out for treatment when symptoms begin to manifest. (T. at 283-284).

{¶41} Winters indicated that she was actively involved in Appellant's treatment for the twelve to eighteen months that he was in the program, and that, to her knowledge, he successfully completed the treatment ordered by the mental health court.

Based on that involvement, Winters testified that when Appellant graduated from the mental health court in mid to late 2006, he had an understanding of his condition and the need to recognize symptoms, to reach out for help, and to stay on his medication. (T. at 284-285).

{¶42} Winters went on to explain that she stayed in contact with Appellant and that on four or five occasions, she took him to training programs that she conducted for law enforcement and other first responders to teach them how to deal with a mentally ill person in crisis. (T. at 286). She stated that at those programs, Appellant shared information about his struggle with mental illness, as well as some of the things that helped him when he was having a crisis. He also shared information that peers had conveyed to him about what was helpful or not helpful in interactions with police or first responders. (T. at 287). Winters indicated that in spite of some nervousness, Appellant did very well in his presentations. (T. at 287).

{¶43} Following her testimony in the State's case, the defense re-called Winters as a defense witness and asked her to detail Appellant's treatment records from 2004-2007, focusing on the hospitalizations accountable to his mental illness. (T. at 585-627).

{¶44} On cross-examination, Winters explained that the records demonstrate that Appellant's schizophrenic symptoms were at their worst in 2004, and then improved through a course of treatment in 2005, 2006, and 2007. (T. at 629). Winters reiterated that through treatment in 2005 and 2006, Appellant learned to recognize the early warning signs of his mental illness and the need to seek treatment. Id. She stated that Appellant's medical records illustrated that Appellant had insight into his symptoms and recognized the need to seek treatment. (T. at 629).

{¶45} On further cross-examination, Winters testified that Appellant was able to manage his money, was his own payee for his disability benefits, and that he was also able to manage daily tasks such as doing his own laundry. (T. at 632-633). She explained that Appellant performed these acts purposefully and of his own volition. (T. at 634).

{¶46} Winters explained that while Appellant reported that he suffered from auditory hallucinations, such as hearing voices, those voices were not necessarily telling him to do things. (T. at 635). She went on to testify that in the months leading up to the murder of Gutshall, Appellant's medical records reflected that he was doing well and was suffering from minimal symptoms of mental illness. (T. at 637-638).

{¶47} Winters stated that Appellant appeared to have minimal symptoms of mental illness on May 2nd and 3rd, 2007, just days before the murder of Gutshall. On those dates, he called her to report that he was doing well. He talked about working or seeking employment, indicated that he was taking his medications, and reported experiencing few auditory hallucinations. (T. at 639-640). Winters explained that although Appellant missed an appointment at the Center on May 2, 2007, he advised her that it was due to a mistake on his part regarding the date and time of the appointment. (T. at 651).

{¶48} Winters admitted that it was just her personal opinion that Appellant was not malingering or exaggerating his symptoms and that such opinion was not based on any standardized testing. (T. at 642).

{¶49} To establish his insanity defense, Appellant presented Dr. Daniel Hrinko, a clinical and forensic psychologist. (T. at 676). Dr. Hrinko testified that Appellant suffers

from paranoid schizophrenia and that Appellant had at least twelve (12) psychiatric hospitalizations. (T. at 676, 686-687). He further testified that Appellant had a pattern of going off of his medication, which resulted in bizarre and dangerous behaviors, usually leading to involuntary hospitalization. (T. at 685). Based upon the records he reviewed, he testified that Appellant had a history of hallucinations, paranoid, unpredictable and aggressive behaviors. (T. at 697). He testified that when he interviewed Appellant on October 19, 2007, Appellant exhibited clear signs of severe mental illness, including confusion, delusional thinking, hallucinations and memory problems. (T. at 700). Based on his own observations, as well as Appellant's records and the accounts of the other trial witnesses, Dr. Hrinko stated that it was his opinion that Appellant had lost his appreciation of right from wrong on May 2-3, 2007, because the "behaviors described on the 4th were sufficiently unusual, bizarre, and driven by mental health problems as to cause [him] to feel that that is where he crossed the line." (T. at 706-716).

{¶50} Upon cross-examination, Dr. Hrinko admitted that he based his opinion, in part, on only two face-to-face interviews with Appellant. The first interview, which took place in October, 2007, five months after the murder of Larry Gutshall, lasted only one hour. The second interview, which took place in May, 2008, one year after the murder, lasted only one hour and forty-five minutes. (T. at 725-726). Dr. Hrinko further admitted that a diagnosis of paranoid schizophrenia does not automatically make Appellant insane. (T. at 730). Dr. Hrinko admitted that despite his condition, Appellant was able to perform normal tasks, such as acting as his own payee for his disability money, doing his own shopping and laundry, and taking the bus to Cleveland to visit his mother. (T. at 729-730).

{¶51} Upon being presented with a report from Heartland Behavioral from early 2009, which indicated that Appellant was malingering as to psychosis, neurological disorder, and amnesia, Dr. Hrinko contended that it was possible for Appellant to be malingering in 2009, but not be malingering in 2007 and 2008. (T. at 728). Dr. Hrinko claimed that his opinion regarding malingering was based, in part, on reports prepared by other mental health professionals and conceded that ninety percent of the symptoms documented in those reports was based on what Appellant himself was telling those professionals. (T. at 752). Dr. Hrinko further stated that he did not administer any standardized tests to rule out the possibility of malingering. (T. at 751-752).

{¶52} Dr. Hrinko admitted that before conducting the evaluation, he informed Appellant that he did not have to answer any questions which might prejudice his case, and that anything he said could be used in court. He indicated that Appellant understood this explanation, and was able to repeat it back to him in his own words. (T. at 773-774). Dr. Hrinko also admitted that Appellant's medical records support that Appellant was doing well from March 27, 2007, to April 26, 2007. (T. at 732). He also accepted Vivian Winters report that Appellant was doing well and was taking his medications on May 2nd and 3rd, 2007, but went on to cite instances from Appellant's mental health records which he argued supported his theory that Appellant's mental condition was slowly degrading on or about May 2nd or 3rd, and that he was merely trying to cover up his confused thoughts by reporting that he was doing well. (T. at 733-735). However, upon further examination, he admitted that there could be other explanations for the information in those reports. As to Vivian Winter's report that Appellant was agitated or manic on April 30, 2007, Dr. Hrinko conceded that the

agitation could have been caused by nervousness over the presentation Appellant had just given. (T. at 732-733). Additionally, with regard to Vivian Winters notation that Appellant believed people were laughing at him during his presentation, Dr. Hrinko conceded that it was possible that people were actually laughing because Appellant made a joke. (T. at 733-734).

{¶53} Dr. Hrinko stated that Appellant's medical records supported his position that Appellant's mental condition was slowly degrading around May 2nd or 3rd, 2007. (T. at 734-735). On further questioning, however, he conceded that the records also reflected that Appellant knew the signs that his symptoms were increasing, recognized the need to seek treatment and medication, and that he did so voluntarily. (T. at 735-736).

{¶54} On cross-examination, Dr. Hrinko admitted that he had no documentation of Appellant's mental condition between May 3, 2007, when he last spoke to Vivian Winters, and June 7, 2007, when he was hospitalized in Los Angeles, California. (T. at 736-737). Dr. Hrinko also conceded that he did not know if Appellant was taking medication, receiving services, or abusing cocaine during the month before he was brought back from California. (T. at 751).

{¶55} With regard to Dr. Hrinko's theory that Appellant was not taking his medication at the time of the murder, Dr. Hrinko admitted that the pills found in Appellant's apartment could have been stockpiled, or could have been old medication of different dosage levels. (T. at 739).

{¶56} Dr. Hrinko theorized that Appellant covered up the victim's body, hid the knife and the dumbbell, locked the door behind him, and fled the state because he was

driven by a delusional belief about a conspiracy, not as a result of consciousness of guilt. (T. at 743-744, 745-747). However, upon cross-examination, he admitted that these actions would also be viewed as attempts to cover up the commission of a murder. (T. at 745-747).

{¶57} The State's expert, Dr. Philip Seibel, a psychologist at Heartland Behavioral Healthcare, testified on rebuttal. Heartland Behavioral healthcare is where Appellant was treated until he was determined to be competent to stand trial. (T. at 804). Dr. Seibel testified that as part of the competency restoration process, he administered two standardized tests on the Appellant. (T. at 804-805). The first test, the MMPI, was administered to Appellant on February 4, 2009. The MMPI is a personality inventory which consists of 567 true/false questions which results in clinical scales indicating the presence or absence of different clinical symptoms like depression, or evidence of schizophrenia or personality disorder. The MMPI also has validity scales to assess the test taking attitude of the examinee and whether he or she is exaggerating or minimizing symptoms. (T. at 805).

{¶58} The second test, the Structured Inventory of Malingered Symptoms (SIMS) was administered to Appellant on February 13, 2009. (T. at 805). This test consists of seventy-five (75) true/false questions covering five different areas. It is designed to assess whether the person describes symptoms of a certain disorder which are atypical for someone who actually does have that disorder. (T. at 806).

{¶59} Dr. Seibel testified that on the MMPI test, Appellant did not appear to be exaggerating or minimizing any symptoms. He scored the way a person who has been diagnosed with schizophrenia and has symptoms partially or fully in remission would

have scored. (T. at 806). Dr. Seibel testified that he believed Appellant's symptoms of schizophrenia were partially in remission because he was evidencing some symptoms of psychosis while at Heartland Behavioral. (T. at 806).

{¶60} On the SIMS test, Dr. Seibel testified that Appellant exhibited minor elevations in the area of psychosis and neurologic impairment. (T. at 806-807). He testified that "psychosis" occurs when a person is out of touch with reality and is experiencing hallucinations or delusions and that neurological impairment occurs when a person experiences unusual neurological symptoms such as strange sensations in the body. (T. at 807). Dr. Seibel further testified that Appellant exhibited an elevation in "amnestic disorder", describing memory problems that a person who has a true documented memory disorder does not report. (T. at 807). Based on these test results, Dr. Seibel testified that, in his opinion, Appellant was significantly malingering as to amnesia, and mildly malingering with respect to psychosis and neurologic disorders. (T. at 807).

{¶61} Because there was a conflict of opinion about Appellant's mental state, the jury, as the trier of fact, had the responsibility to weigh the credibility of the expert witnesses. Based on the evidence presented, the jury chose to rely on the testimony of Vivian Winters and the expert opinion of Dr. Seibel, instead of the opinion of Dr. Hrinko, and reject Appellant's defense of not guilty by reason of insanity, concluding that Appellant understood the wrongfulness of his actions on the day of the murder.

{¶62} After a thorough review of the record, weighing the evidence and all reasonable inferences, considering the credibility of witnesses, and resolving the conflicts in the evidence, this Court cannot say that "the trier of fact clearly lost its way

and created such a manifest miscarriage of justice" which would warrant the reversal of the trial court's findings. There was more than adequate evidence in the record to support the jury's findings. The jury was presented with the testimony of two mental health professionals, both highly qualified in the area of not guilty by reason of insanity evaluations, and both found that Appellant suffered from paranoid schizophrenia and polysubstance abuse. One determined that Appellant knew the wrongfulness of his actions and one did not.

{¶63} Because the record supports the jury's conclusion, we cannot say that its decision finding Appellant sane at the time of the offense was against the manifest weight of the evidence.

{¶64} Accordingly, Appellant's sole assignment of error is overruled.

{¶65} For the reasons stated in the foregoing opinion, Appellant's conviction entered in the Richland County Court of Common Pleas is affirmed.

By: Wise, J.

Edwards, P. J., and

Hoffman, J., concur.

/S/ JOHN W. WISE

/S/ JULIE A. EDWARDS

/S/ WILLIAM B. HOFFMAN

JUDGES

JWW/d 04/14

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
PRESTON FENDERSON, JR.	:	
	:	
Defendant-Appellant	:	Case No. 09 CA 64

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed.

Costs assessed to Appellant.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES