

Circuit Court for Baltimore County
Case No. 03-K-14-006607

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1777

September Term, 2016

BRANDON MATTHEW YEAGER

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: September 15, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

At his bench trial in the Circuit Court for Baltimore County, Brandon Matthew Yeager, appellant, entered a plea of “not criminally responsible” (“NCR”) on charges stemming from an incident during which he stabbed his mother. It was undisputed that Yeager was psychotic at the time of the attack; the sole issue was whether this psychosis was caused by a “settled” mental disorder, as Yeager maintained, or whether it was a temporary abnormality triggered by his abusive use of illegal drugs, as the State argued. The trial court, finding that Yeager had not met his burden of establishing his NCR defense by a preponderance of the evidence, convicted him of attempted second degree murder, first degree assault, and carrying a deadly weapon openly with the intent to injure.

In this Court, Yeager challenges those convictions, arguing that “the trial court erred in failing to find that [he] was not criminally responsible for his conduct in this case.” For the reasons that follow, we disagree and therefore affirm.

FACTS AND LEGAL PROCEEDINGS

Shortly before 6:00 a.m. on November 18, 2014, Yeager, while in a psychotic state, used a kitchen knife to attack his mother, Michelle Boone, at her home in Dundalk. This assault occurred four days after Yeager was released from prison, where he had been incarcerated the previous twelve months, for violating parole. While staying with Ms. Boone during those few days, Yeager had been saying and doing things that did not make sense, such as asking her to keep watch while he slept. Concerned by her son’s behavior, Ms. Boone discussed seeing a doctor.

On the morning of the attack, Ms. Boone awoke early to find that Yeager had turned the television around to face the wall and was sitting in the living room. Feeling “something was wrong,” Ms. Boone stayed up and made some coffee. When she realized she had no sugar, she phoned her long-time neighbor and friend, Bonnie Williams, to ask her to bring over a bowl of sugar.

When Ms. Williams arrived, Yeager had a knife in his hand. According to the two women, he was startled shortly thereafter, by an innocuous movement made by Ms. Williams. He grabbed his mother by her hair. Ms. Williams “jumped up and said Brandon, Brandon, that’s your mom and he stopped[.]” But after Ms. Williams fled to call for help, Yeager stabbed his Ms. Boone repeatedly, in the head, neck, and arms. He released her before barricading the doors. Police eventually persuaded him to surrender.

Both women described Yeager’s demeanor immediately before the assault as “really scared,” “petrified,” and “like he just wasn’t himself.” Ms. Williams recalled that Yeager’s eyes, which are blue, “looked black.”

The State, through its forensic psychiatrists and psychologist, conceded that Yeager was psychotic, both at the time of this incident and over the ensuing hours, as he was arrested, treated for injuries sustained during the incident, and interviewed by police. A DVD of that interview recorded Yeager telling police that the person he stabbed was not his mother, that his mother was killed “years” before, that he had “stabbed Tony Montana,” and that the person he tried to kill had a camera in her eye and a bomb in her

stomach. He reported that “they” were trying to kill him and that he was just “trying to survive.”

At trial, the defense established that Yeager, then aged 23, had an “extensive family history of mental illness, alcohol and substance abuse.” It was undisputed that Yeager himself also had a history of substance abuse and mental illness diagnoses. Beginning with marijuana at age 14, Yeager’s drug use escalated to heroin and cocaine by age 18. At times, he also abused crack, Xanax, Percocet, MDMA (also known as Ecstasy), and synthetic marijuana (known as K-2).

Yeager presented expert testimony by forensic psychiatrist Neil Blumberg, M.D. He reviewed Yeager’s history of “emergency petitions” (“EPs”) filed by family members, leading to involuntary mental health hospitalizations based on psychiatric evaluations. Following emergency petitions filed in July 2010 and March 2011, Yeager tested positive for marijuana and was diagnosed with mood disorder and prescribed anti-psychotic medication. In February 2013, he was admitted to a drug treatment center, where he was diagnosed with mood disorder not otherwise specified, anxiety disorder not otherwise specified, and opiate dependence. At that time, Yeager acknowledged using heroin, cocaine, alcohol, Ecstasy, Percocet, mushrooms, and Xanax.

Although Dr. Blumberg acknowledged that Yeager’s EPs coincided with his substance abuse, he distinguished those episodes from Yeager’s mental illness during his year-long imprisonment, from November 18, 2013 until November 14, 2014. While at the Division of Corrections (“DOC”), he was diagnosed with major depressive disorder.

In the second half of his incarceration, he developed “bizarre and agitated behavior and report[ed] psychotic symptoms.” DOC records also indicate that in August 2014, Yeager reported “taking a handful of Ecstasy.” Dr. Blumberg explained that Yeager told him that “he felt like he was under the influence of Ecstasy, as opposed to actually taking Ecstasy.” No toxicology screens were performed by the DOC.

Dr. Blumberg testified that after Yeager was arrested for attacking his mother, he was incarcerated in the mental health wing of the Baltimore County Detention Center for the entire nineteen months before trial. Doctors who evaluated Yeager at the detention center described “active psychotic symptoms,” including auditory hallucinations. In December 2014, Yeager was diagnosed as schizophrenic and was prescribed mood stabilizers and an anti-psychotic medication. Dr. Blumberg noted that “the records [from the detention center] also indicate that he is continuing to experience delusions and hallucinations at least through January 17th of 2015,” two months after the attack. Detention center records also showed that on February 19, 2015, Yeager was confabulating, which is “reporting information that is not factually true but you believe it’s true.” According to Dr. Blumberg, such behavior is “often seen in individuals who have an organic mental illness, that is, they don’t have a memory for events so . . . their brain just makes things up and they believe that it’s actually accurate.”

Dr. Blumberg testified:

There seems to be no question that his actions in harming his mother were based upon his delusional belief that there was some type of camera in her eye, that it really wasn’t her but it was this person, Tony Montana, who was

somehow associated with the mafia and, you know, that he acted because his life was in danger.

He testified that Yeager “clearly meets the standard of lacking substantial capacity to conform his conduct to the requirements of the law” and at the time of the offense, “was without reason or understanding and, again, quite psychotic.”

In Dr. Blumberg’s expert opinion, moreover, Yeager suffered from an “unspecified bipolar disorder,” and it was more likely than not that his psychosis was caused by that mental disorder rather than by his use of drugs. In reaching that conclusion, he reviewed and disagreed with the opinions of the State’s experts that Yeager’s psychosis was induced by drug use. According to Dr. Blumberg, Yeager continued to suffer from depression, psychoses, and other symptoms of a mental disorder while in prison, long after any intoxicating drugs would have been eliminated from his system:

What we have here is someone who remains actively delusional with hallucinations at least three months after he was incarcerated for this offense. So, that’s a piece of information that I think is really dispositive of this case being as a result of an underlying mental disorder. That is, he’s continuing to display active psychotic symptoms, clearly after the drugs would have been gone from his body.

Yeager, testifying on his own behalf, confirmed his long history of substance abuse and admitted that after smoking some marijuana on the day of his prison release, he was delusional and “paranoid.” He purchased “a bag of marijuana” immediately after being released from prison on November 14, rolled a joint at a fast food restaurant, took one drag, then threw away the joint but kept the remainder in his shoe. While

incarcerated by the DOC, he consumed Suboxone on twenty to thirty occasions, which he described as “not a lot for a user.” His Suboxone use began about half-way into his term of imprisonment. Yeager recalled taking the drug in late October 2014 and early November.

In rebuttal, the State presented expert testimony from three mental health evaluators who disputed Dr. Blumberg’s opinion that Yeager’s psychosis on the day of the attack was the product of a mental disorder. Dr. Christiane Tellefsen, an expert in forensic psychiatry, opined that “the most likely source of his psychotic problems is the ongoing use of drugs of abuse[.]” She explained that

many drugs can cause psychotic conditions that last for a very long time, months and months and months. Some people never get better and for some of those folks, we would actually, most likely convert their diagnosis to something like schizophrenia. But some people get better in a couple of days, some people get better in a couple of months or couple of weeks, it’s, it’s variable. It depends on the drugs that were used, hallucinogenic drugs tend to persist longer than non-hallucinogenic drugs. It depends on how long somebody has been using them for, you know, if they’ve been using them chronically, it’s going to take longer to clear their system.

Dr. Tellefsen testified that Yeager’s psychological testing “doesn’t indicate schizophrenia” and that his psychiatric and medical history established a link between his psychosis and his drug use. She explained that, given Yeager’s extensive history of substance abuse, beginning at age 14 and continuing through his incarceration and release preceding the attack, the effects of any drugs he ingested would be more likely to “cause a psychotic state for a longer period of time.” For example, at the time he suffered psychotic symptoms that led to emergency petitions for involuntary commitment, he was

regularly using intoxicants, including marijuana and heroin, as confirmed by toxicology test results.

Dr. Tellefsen also disagreed with Dr. Blumberg’s assessment that Yeager’s history in the DOC indicated he had a mental disorder that endured in the absence of intoxicants. She found it significant that his psychiatric abnormalities coincided with his admitted abuse of Suboxone in the DOC during the second half of his confinement, when Yeager admittedly took Suboxone twenty to thirty times, but later “cleared up in the Detention Center after the offense within . . . six to eight weeks for the most part.” Pointing to Yeager’s reported use of Ecstasy and/or other stimulants while incarcerated, and DOC observations in August 2014 of sweating, dilated pupils, and open mouth, she explained that these symptoms “were not consistent with somebody who is psychotic from a primary psychiatric disorder, like schizophrenia or bipolar disorder.” Instead, they were typical of individuals under the influence of a stimulant.

Dr. Sameer Patel, another forensic psychiatrist called by the State, similarly testified that although Yeager “was psychotic at the time of the offense” and therefore was unable “to appreciate the criminality or conform his conduct,” this episode was “not due to schizophrenia.” In his view, “the most likely scenario” is that the psychosis was triggered by “substance abuse, substance intoxication and abuse leading to the offense.” He opined that Yeager “might not have been able to appreciate the criminality or conform his conduct, but it was related to his substance use[.]” Although Dr. Patel did not opine that Yeager used drugs on the morning of the attack, he pointed to Yeager’s recent use of

Suboxone in prison, the “very distinct appearance of his pupils on the day of the attack, and his use of marijuana on the day he was released, noting that he “put it in his shoe” and that it was not clear whether “he was using it later.”

The State also called Dr. Allison Houle, as an expert in clinical psychology. When she evaluated Yeager in May 2015, six months after he was incarcerated for this attack, he had no psychotic symptoms. She diagnosed him with (1) multiple substance use disorders; (2) “other specified personality disorder with anti-social features”; and (3) “other specified disruptive impulse control and conduct disorder.” Although she “believe[d] that Mr. Yeager did have a psychotic disorder” and “that he exhibited psychotic symptoms at different times,” she also “believe[d] that it was related to substances, as opposed to a primary psychotic disorder, such as schizophrenia.”

The trial court, sitting as the trier of fact, was not persuaded by a preponderance of the evidence that Yeager was not criminally responsible. The court explained:

Turning to the issue of criminal responsibility, as raised by the defense, the burden shifts to the defense to, to affirmatively prove by a preponderance of the evidence the Defendant could not conform his conduct to the requirements of the law or appreciate the criminality of his action. I, and that this is caused by either mental illness or mental retardation. In this regard, I have taken into account the testimony and the ultimate opinions of Drs. Blumber[g], Tellefsen, Patel and Houle, all of whom . . . have been accepted by the Court as experts in the areas of general . . . psychiatry and forensic psychiatry, as well as Dr. Houle has been accepted as an expert in the area of clinical psychology. While all four doctors agree that during the subject incident the Defendant was experiencing [a] psychotic episode whereupon he could not and did not conform his conduct to the requirements of the law, or appreciate the criminality of his actions[,] Dr. Tellefsen, Houle and Patel disagreed with Dr. Blumberg’s conclusion that his psychotic episode was the result of mental illness. To the contrary, they suggested it resulted from his history

of substance abuse[.] [A]lthough there has been no direct evidence offered that the Defendant was under the influence of drugs at the time of the occurrence, ample circumstantial evidence has been suggested that he may have been suffering from the lingering effects of earlier drug use. Similarly, Dr. Blumberg’s opinion that the Defendant suffered from multiple mental disorders, including bipolar disorder, schizophrenia and depression, is also well supported by the evidence in the record. That being the stated, the Court is in a state of equipoise as to the two positions that have been put forward. Either could have been the case, but neither [is] more likely than the other. This being the case, the Court finds that the defense has not met its burden by a preponderance of the evidence, thus the defense of . . . not criminally responsible fails.

DISCUSSION

Yeager contends that “the trial court erred in failing to find that [he] was not criminally responsible for his conduct in this case.” Under Maryland law, a criminal defendant “has the burden to establish, by a preponderance of the evidence, the defense of not criminally responsible.” Md. Code, § 3-110(b) of the Criminal Procedure Article (“CP”). “A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, **because of a mental disorder** . . . , lacks substantial capacity to: (1) appreciate the criminality of that conduct; or (2) conform that conduct to the requirements of law.” CP § 3-109(a) (emphasis added). It “does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct.” CP § 3-109(b). Nor does it include an abnormality caused by a defendant’s voluntary consumption of intoxicants, such as alcohol or illegal drugs. *See Parker v. State*, 7 Md. App. 167, 174-75 (1969).

Because Maryland courts, like most courts, acknowledge that mental disorders may coexist with substance abuse, we have recognized what has become known as the

“settled insanity” doctrine, which excuses criminal responsibility for a defendant whose actions stem from “a permanent or chronic mental disorder caused by the habitual and long-term abuse of drugs or alcohol.” *See Berry v. Indiana*, 969 N.E.2d 35, 42 (Ind. 2012); *Vermont v. Sexton*, 904 A.2d 1092, 1101–04 (Vt. 2006), *overruled on other grounds by Vermont v. Congress*, 198 Vt. 241 (2014). Although an incapacity to conform the accused’s conduct to the law, or to appreciate the criminality of such conduct, is not a defense when such conduct is the direct result of voluntary intoxication, the law recognizes there may be instances when the accused has abused intoxicants to the point that he or she also suffers from organic brain damage resulting in a mental disorder. *See Sexton*, 904 A.2d at 1104.

In *Porreca v. State*, 49 Md. App. 522 (1981), we applied the settled insanity doctrine in a case decided when Maryland still had the plea of “insanity.” Like Yeager in this case, Porreca stabbed the victim with a knife during a psychotic episode. *Id.* at 523-24. And like Yeager, Porreca also had a long history of drug use. *Id.* at 525. He had taken PCP and cocaine the day before the attack, *id.*, and he pleaded not guilty by reason of insanity. *Id.* at 524. At that time, Maryland law provided that if a criminal defendant presented sufficient evidence to call into question his sanity, then the burden of production and persuasion shifted to the State to prove, beyond a reasonable doubt, that he was not insane. *Id.* at 523 n.1.

To satisfy his initial burden of production, Porreca presented testimony from a forensic psychiatrist who explained that PCP commonly triggers a psychosis that may

return weeks or months after its use, that the drug is capable of causing four or five different categories of serious mental disorders, and that it could cause an organic brain syndrome that is irreversible. *Id.* at 525. According to the doctor, Porreca’s psychosis manifested itself at least a month before the assault, and it continued, intermittently, for three to six months. *Id.* During this period, Porreca’s periods of psychosis decreased as the effects of his drug use abated. *Id.* at 525. In the psychiatrist’s opinion, therefore, Porreca’s psychosis at the time of the attack was caused by his prior use of intoxicants. *Id.* at 525-26.

Relying on *Parker*, 7 Md. App. at 174-75, holding that an insanity defense was unavailable to a defendant who committed a crime during a drunken bout, the trial court ruled that, because Porreca had ingested the drugs voluntarily and was sane, both before taking the PCP and after it wore off, he did not present sufficient evidence to shift the burden to the State to prove his sanity beyond a reasonable doubt. *Id.* at 525-26. We reversed Porreca’s conviction for attempted murder, holding that he satisfied his burden of production by presenting the psychiatrist’s testimony that his psychosis stemmed from the use of PCP, which could cause a “settled” insanity in the sense that it “was not the result of the ingestion of PCP on any particular occasion.” *Id.* at 530. We observed that a “settled insanity” may be caused by “continued or persistent use” of drugs, resulting in a mental abnormality that persists “even after the chemical agent was no longer present in the individual’s blood stream,” *id.* at 528, and that although “we do not want a criminal to escape punishment by the simple expedient of getting drunk first, neither do we want to

punish anyone who is legally insane, even though the cause of [the] insanity [was] a long-term use of drugs or alcohol.” *Id.* at 529.

Since *Porreca*, Maryland law has changed, so that the pertinent plea now is “not criminally responsible,” and the burden of production and persuasion is at all times on the criminal defendant, who must prove – but only by a preponderance of the evidence – that his or her inability to control or understand the criminality of his conduct stems from a “mental disorder.” *See* CP § 3-109; *Johnson v. State*, 143 Md. App. 173, 179 (2002).

The term “mental disorder” is statutorily defined as follows:

(g)(1) “Mental disorder” means a behavioral or emotional illness that results from a psychiatric or neurological disorder.

(2) “Mental disorder” includes a mental illness that so substantially impairs the mental or emotional functioning of a person as to make care or treatment necessary or advisable for the welfare of the person or for the safety of the person or property of another.

(3) “Mental disorder” does not include mental retardation.

CP § 3-101(g).

In this case, the trial court and counsel acknowledged from the outset that the dispositive issue was whether Yeager’s obvious psychosis at the time he attacked his mother resulted from a mental disorder, such as bipolar disorder or schizophrenia, or whether it stemmed from a temporary and reversible abnormality triggered by his drug use. Yeager argues that under

Porreca, [he] clearly adduced sufficient evidence to place his sanity at issue under a theory of settled insanity. There was no suggestion that the police recovered any drugs or drug paraphernalia from [Yeager’s] home or from his person. Ms. Williams did not see any drugs in Mrs. Boone’s home. Nor did she smell the odor of marijuana. Ms. Boone had not seen her son

consume any drugs since he returned home on November 14. Nor had she seen any drugs or drug paraphernalia in the home. The evidence was that at the time of the psychotic episode [Yeager] was suffering from settled insanity as a result of his long and continued use of drugs. Dr. Tellefsen testified that “the most likely source of [Yeager’s] psychotic problems is the ongoing use of drugs.” Dr. Patel testified that appellant had not consumed drugs on the morning at issue, but opined that his psychotic behavior . . . was “related to his substance use” in the past. The trial court found as much

Thus, where the evidence was that [Yeager] (1) was behaving strangely from the time he arrived home on November 14; (2) was psychotic at the time of the offense; (3) was psychotic when he was interrogated by the police hours after the incident; and (4) that following his arrest in this case, he remained psychotic while incarcerated in the mental health wing of the Baltimore County Detention Center for at least eight weeks, as Dr. Tellefsen testified, [Yeager] clearly adduced ample evidence that he was suffering from a settled insanity when he stabbed his mother. Contrary to the trial court’s finding that it was “in a state of equipose as to the two positions that have been put forward,” it is clear that, in fact, [Yeager] did meet his burden of establishing by a preponderance of the evidence that he was not criminally responsible. Thus, reversal is clearly warranted.

The State responds that Yeager’s argument “ignores the difference between burdens of production and burdens of persuasion” and that although “Yeager satisfied his burden of production[,]” he “did not satisfy his burden of persuasion.” We agree with the State that Yeager mistakenly “conflates his burden of production with his burden of persuasion.”

In *Porreca*, we held the defendant had satisfied his burden of *production*, by presenting testimony that called into question whether his psychosis was the result of a “settled insanity,” so that the State was required to prove *beyond a reasonable doubt* that Porreca was sane. *Porreca*, 49 Md. App. at 528-29. Under our current statutory scheme,

however, Yeager has the burden of persuasion to establish, by a preponderance of the evidence, that he was not criminally responsible by reason of a mental disorder that prevented him from conforming his conduct to the requirements of the law or appreciating the criminality of that conduct. *See* CP § 3-109, § 3-100. For this reason, *Porreca* is legally inapposite.

A preponderance burden of persuasion comes into play when “the fact finder finds the evidence supporting each party of equal weight.” *Bd. of Trustees, Community College of Baltimore City v. Patient First Corp.*, 444 Md. 452, 470 (2015). That is what happened here, when the trial court ruled that the State’s evidence that Yeager’s psychosis was caused by his substance abuse was “in equipoise” with the defense evidence that his psychosis was caused by a mental disorder. “In that case, the fact finder must find against the party bearing the burden of persuasion,” *see id.*, who in these circumstances was Yeager. *See id.* *See generally* 5 L. McLain, *Maryland Evidence* § 300:4 (burden of persuasion is also known as “the risk of nonpersuasion, because if two possible conclusions can be inferred from the evidence adduced and neither can be said to have been proved, the judgment must go against the party on whom the burden rests”).

Applying these principles, we review the trial court’s ruling that Yeager failed to establish that he was not criminally responsible, to determine whether the court applied the correct legal standard and whether it committed clear factual error in finding that this “battle of the experts” was a tie. “In conducting this review, we give due regard to the trial court’s opportunity to judge the credibility of the witnesses. We do not sit as a

second trial court.” *Buck v. State*, 181 Md. App. 585, 647 (2008) (internal quotation marks and citations omitted). Moreover, we are mindful that

[t]he quality and quantity of evidence required to convince a rational fact finder of the criminal responsibility of an accused cannot be considered in a vacuum. It must depend to some extent on the evidence of a lack of criminal responsibility which rebuts it.

Curtis v. State, 68 Md. App. 509, 517-18 (1986).

Here, the trial court applied the correct standard of persuasion when it evaluated the competing scenarios presented by the State and defense experts, finding that “[e]ither could have been the case, but neither [is] more likely than the other.” Moreover, the evidence detailed above in our review of the record provided a sufficient factual basis for that finding.

To be sure, the evidence cited by Yeager, if fully credited, would have been sufficient to support a finding that his psychosis was the product of a mental disorder, for the reasons articulated by Dr. Blumberg. But the court did not find that evidence more persuasive than the countervailing expert testimony and evidence presented by the State in support of the contrary position that Yeager’s psychosis was the temporary product of his substance abuse. As Dr. Tellefsen testified:

Psychosis can be caused by lots of things, primary psychiatric disorders such as schizophrenia, bipolar disorder or other conditions, brain damage from head injuries or toxic effects from substances, either medications or drugs or abuse of alcohol, other metabolic conditions, other medical problems, all sorts of things, and situational stresses can also lead to psychosis. The, the way that you filter out all of those possibilities is by looking at the course of the symptoms over time and what the symptoms are associated with, whether somebody has a history of developing similar symptoms under same or similar circumstances and all of those things. And

when you sift through all of the material in Mr. Yeager’s case, the most likely source of his psychotic problems is the ongoing use of drugs of abuse.

Dr. Patel concurred with Dr. Tellefsen that, “given the compilation of symptoms we saw in DOC, his report of his behavior in DOC, his report of his behavior after release from DOC, and the time course of symptoms . . . the most likely scenario would be substance abuse, substance intoxication and abuse leading to the offense.” Likewise, Dr. Houle testified that “Mr. Yeager did have a psychotic disorder, yes. I believe that it was related to substances, as opposed to a primary psychotic disorder[.]”

Based on this record, the trial court did not err in ruling that Yeager failed to establish that he was not criminally responsible for attacking his mother.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.