

Circuit Court for Wicomico County
Case No. C-22-CR-18-000764

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 507

September Term, 2021

BRENDON L. FIELDS

v.

STATE OF MARYLAND

Beachley,
Shaw,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: September 8, 2022

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Wicomico County, Brendon Fields (“Fields”), pleaded not criminally responsible (“NCR”) to first-degree murder, second-degree murder, attempted first-degree murder, attempted second-degree murder, and two counts each of first-degree assault, second-degree assault, reckless endangerment, and use of a deadly weapon with intent to injure. He waived a jury trial and was convicted on all counts by the court, based upon an agreed statement of facts.

The court held an evidentiary hearing on the issue of Fields’ criminal responsibility. Fields argued he was not criminally responsible pursuant to Md. Code, Crim. Pro. (“CP”) § 3-109(a), which exempts criminal responsibility if at the time of the conduct, a mental disorder prevents the defendant from either appreciating the criminality of the conduct or conforming that conduct to the requirements of the law. At the conclusion of that hearing, the court found Fields criminally responsible, which finding is the basis of Fields’ appeal.¹ For the reasons that follow, we hold that the circuit court did not err and affirm the judgments.

ISSUE PRESENTED

Fields presents one issue for our review: “Did the trial court err by finding that he did not have a mental disorder and thus was criminally responsible for his conduct in this case?”

¹ The court sentenced him to two consecutive life sentences without the possibility of parole. The two consecutive life sentences were imposed for the first-degree murder and attempted first-degree murder charges. The court did not impose a sentence for the use of a deadly weapon counts and the remaining counts merged for purposes of sentencing.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 3 p.m. on November 10, 2018, members of the Wicomico County Sheriff's Office responded to a report of a stabbing at a house in Salisbury. They observed two male victims in the front yard. One victim, Charles Turner ("Turner") who lived there, was alive and told police that Fields had stabbed him and the other victim, Frank Donaldson ("Donaldson"). Donaldson was pronounced deceased at the scene.

Fields was not present, but soon called 911 and reported that he stabbed Turner and Donaldson and informed officers of his location at the Salisbury mall. When officers arrived at that location, they placed Fields under arrest. Fields waived his *Miranda*² rights and submitted to two interviews, during which he stated that he stabbed the victims with a knife he retrieved from Turner's kitchen.

Turner was transported to Peninsula Regional Medical Center with critical injuries. The medical staff performed life-saving procedures. Once stable, police were able to interview Turner, and he reported that just prior to the stabbing, Fields entered the kitchen, retrieved a knife, and told Turner "I'm going to kill somebody." Fields stabbed both men multiple times. An autopsy revealed that Donaldson died of three sharp force injuries to his torso that injured his lungs, his heart, and his spleen, and caused significant blood loss.

Fields was indicted on twelve counts. He entered a plea of NCR and the charges against him were submitted to the court based upon an agreed statement of facts

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

consistent with the above recitation. The court found Fields guilty of all counts, including first-degree murder of Donaldson and attempted first-degree murder of Turner.

At the ensuing NCR hearing, Fields argued that he was not criminally responsible due to a mental disorder that caused him not to appreciate the criminality of his conduct and/or prevented him from conforming his conduct to the law. Specifically, at the time he committed the offenses, he was experiencing either an acute psychotic episode in “the nature of schizophrenia” or substance induced psychosis occasioned by long-term alcohol abuse. The State responded that the “limited universe” of explanations for Fields’ conduct included an acute psychotic episode, voluntary intoxication, or that Fields was not telling the truth when he confessed. The State maintained that the only one of these explanations, an acute psychotic episode, would qualify for an NCR defense.

Fields testified in his defense. Fields, then age 32, explained that at the time of the stabbings he had known Donaldson for most of his life and Turner for several years. Donaldson was “like [his] stepfather” because he was in a relationship with Fields’ mother, Anjaette Gillespie (“Gillespie”).

Fields also testified that, prior to the crimes, he was staying at the home of his sister, Shakia Fields (“S. Fields”), and her family. The night before the offenses, Fields woke from his sleep because he thought he heard someone outside “trying to get [him] to come out.” Fields woke S. Fields and her husband and told them what he had heard; however, they did not see or hear anyone. Fields testified that he had not consumed any alcohol the day before.

Fields further testified that, on the day of the incident, Gillespie picked him up and drove him to Turner's house. Gillespie left him there with Donaldson and Turner and went to the liquor store. Fields stated that he watched television and talked with the two men, and they did not argue. Gillespie returned a short time later with alcohol but left again because she had forgotten something. When asked what happened next, Fields stated that while Gillespie was gone, "everything happened. [Donaldson] got stabbed and [Turner] got stabbed." Fields explained that he stabbed Donaldson and Turner because "that's what [he] was told to do" and "what [he] believed [he] had to do." He did not know who told him to stab them, saying it was "[w]hoever was outside the house or whoever that was."

Gillespie returned to the house, after which Fields fled. Fields knew he "ended up at the mall" but could not recall how he got there. He claimed he did not remember calling the police while at the mall. Fields testified that he consumed one alcoholic drink prior to the stabbing but was not intoxicated.³

On cross-examination, Fields confirmed that he had no diagnosed issues with psychosis and no family history of psychosis prior to the stabbings. He had a history of alcohol abuse, having started drinking when he was 15 and abusing alcohol when he was 19. He stated that he typically consumed between four and five "big cans" of beer per

³ Conflicting evidence was presented as to how many alcoholic beverages Fields had consumed prior to the offenses. He testified at the hearing that he had consumed only one drink, but in his competency evaluation interview, he told the psychologist that he consumed two beers.

day, but sometimes he also drank liquor. He considered himself an alcoholic. Though he denied using alcohol the night before the stabbings, Fields testified that it would not surprise him if S. Fields said that he did consume alcohol.

The State also identified numerous discrepancies between Fields' testimony at the hearing claiming an inability to recall the events following the stabbings and his recollection of those events during his later competency interviews. Fields acknowledged that he initially reported that the first time he heard voices was the early morning hours of November 10, 2018 and that he had not heard voices since that date. He testified indicating that statement was true. He did not recall telling the psychologist in a subsequent interview that he had continued to hear voices after November 10, 2018. Fields reiterated that he had not heard voices since the offenses.

Fields also called as a witness Dr. Kimberly Witczak, Psy.D. ("Dr. Witczak") who was accepted as an expert in psychology and psychiatry as it relates to criminality and the ability to conform behavior. Dr. Witczak completed a 16-page report based on four in-person interviews with Fields;⁴ phone interviews with Fields' aunt and S. Fields; review of his two video-recorded interviews with the police;⁵ review of police interviews of S.

⁴ The interviews took place on April 29, 2019, July 9, 2019, August 8, 2019, and September 25, 2019. The first interview was two hours long and the other three interviews were one hour each.

⁵ The video recordings were not played for the court or introduced into evidence at the NCR hearing.

Fields and Gillespie; and other relevant documents. The report was introduced into evidence.

Dr. Witczak confirmed that Fields had no psychiatric diagnoses beyond a possible substance abuse disorder,⁶ and that, at the time of the offenses, he consumed alcohol every day, drinking “anywhere from a couple of beers to ‘a lot,’” but consistently denied being intoxicated at the time of the offenses. Dr. Witczak opined that a psychiatric diagnosis may, nonetheless, exist even if undiagnosed because the person does not seek treatment for various reasons, or the person has a substance abuse disorder, and their psychiatric symptoms are masked by substance usage. She reasoned that because only two years had passed since the offenses, it was possible that Fields had experienced the first of what would be multiple psychotic episodes, and that his age was consistent with the onset of a psychotic disorder.

During Dr. Witczak’s four interviews with Fields, he was “very consistent with the fact that he was hearing voices and paranoid at the time of the offense[s].” During his first interview, he reported that he heard voices outside of S. Fields’ house around 2 or 3 a.m. telling him to come outside. He also reported that while he was at Turner’s house, he remembered hearing “voices through his phone” and that “the voices told him to go get a knife.” He stated that he had never had any problems with either victim. He said that he

⁶ Fields had twice participated in substance abuse treatment—in 2014 and 2017—for “problematic alcohol use.”

liked them. He also indicated that he consumed two beers that day but was not intoxicated.

Fields said, during the first interview, that he began stabbing Turner and Donaldson inside the house and then followed them outside and continued stabbing them. After he stopped stabbing them, he went back inside but could not recall why. When he came back outside, Gillespie had returned and was screaming. Fields “took off.” He went to his cousin’s house and then borrowed clothing from someone else he knew “to disguise himself.” He called the police from the mall because he was sure they were looking for him. He was “pretty sure” he knew that stabbing someone was illegal when he committed the offenses.

During his second interview, Fields added that at the time of the offenses, he was “under the impression that [he] was gonna be hurt or [his] daughter was gonna be hurt and that’s it.” He told Dr. Witczak that he stabbed the victims to “save” his daughter. He stated that he “never heard voices prior to the offense and had not heard voices since a few hours after the offense.”

During his third interview, Fields reiterated that he was fearful for his daughter’s safety at the time he committed the offenses. He also reported receiving threats by telephone. During his fourth and final interview, Fields reported that he sometimes still believed that people were out to get him, but that it had been “a few months” since he had heard voices. He later said he was continuing to hear voices and that it was “always something negative.”

S. Fields reported to Dr. Witczak that at approximately 2 a.m. on November 10, 2018, she awoke to discover Fields pacing around, stating that he was hearing voices, and asking her questions about people outside. S. Fields did not believe that Fields had consumed any alcohol or drugs prior. Fields continued to exhibit “psychotic symptoms” through the morning. S. Fields stated that she contacted Gillespie, who agreed to come and speak to Fields. After Fields told Gillespie that he thought S. Fields was “setting him up,” Gillespie decided to take Fields to Turner’s house. S. Fields reported that though Fields has had issues with substance abuse, he had never behaved in a manner like he did leading up to the offenses.

In her interview with Fields’ aunt, Dr. Witczak learned that she spoke to Fields on November 10, 2018. Fields’ aunt reported he was “verbally aggressive with her” and “didn’t sound like himself,” and that was the first time he had ever displayed that behavior before. The aunt further reported that she advised other family members to take him to the hospital.

Dr. Witczak also reviewed Fields’ two recorded interviews with police which occurred on November 10, 2018. She noted that Fields appeared “very paranoid,” and during the first interview, he told police that he committed the crimes because he was told that’s what he was supposed to do and that if he had not stabbed the victims then “someone would have died.” Dr. Witczak characterized this as “a psychotic motive.” She explained that he told the police that he “[h]eard someone telling him to get the knife in his head and to stab and kill them, voices told him that.”

Per Dr. Witczak, Fields appeared “even more paranoid” in a second interview that took place one hour later. He asked police if they were hearing anything other than Fields’ voice and expressed that he feared for his life. He elaborated that the voices told him that if he did not kill the victims, the voices would kill his sister or his mother. The voices came “through his phone” and said that they “knew where he was.” Fields believed that the speakers could see him through his phone camera.

Dr. Witczak opined that although she struggled with the case, the “most powerful piece of evidence” was the video of Fields on the day of the offense with law enforcement, wherein she observed the psychosis. She noted that video occurred “before any plea of not criminally responsible was probably ever introduced into his thinking.” Although Dr. Witczak stated that while she could understand that some might question the veracity of self-reports of psychosis because of the “secondary gain,” she believed the police interview and the self-report was consistent with all the other sources.

As to her conclusions of a psychiatric diagnosis, Dr. Witczak indicated that she had considered “substance-induced psychotic disorder” as a diagnosis “given the sudden onset and remission of symptoms at the time of the offense,” but ruled it out. She reasoned that, in all interviews with her and with the police, Fields consistently denied being intoxicated on November 10, 2018, and there was no collateral information evidence showing that he was intoxicated. She noted that it was possible that the onset and remission of symptoms were not as sudden as what was reported given Fields’

statement in his final interview with Dr. Witczak wherein he indicated that he continued to hear voices.

Dr. Witczak concluded that at the time of the offenses, Fields met criteria for an unspecified schizophrenia and other psychotic disorder, as well as a severe alcohol use disorder.⁷ Dr. Witczak opined that Fields was not criminally responsible because his mental disorder prevented him from appreciating the criminality of his actions *and* prevented him from conforming to the requirements of the law.

On cross-examination, Dr. Witczak acknowledged the possibility that, over the course of her four interviews with Fields, he may have conformed his answers to what he believed she wanted to hear. She opined that she would credit a statement made under oath, such as Fields' in court testimony that he did not continue to hear voices after November 10, 2018.

The prosecutor questioned Dr. Witczak about the possible role that alcohol could have played in Fields' behavior. Dr. Witczak clarified that she did not rely only on Fields' self-reports that he was not intoxicated at the time of the offenses, but also relied upon the lack of toxicology reports, the lack of any reference in the police report to signs of intoxication, and her observations of Fields' behavior during his police interviews. She opined that, in her experience, substance-induced psychosis was less common among

⁷ Dr. Witczak noted in her assessment of criminal responsibility that only the unspecified schizophrenia and other psychotic disorder qualified as a mental disorder supporting an NCR defense, and severe alcohol use disorder does not.

alcohol users than with other substances. She agreed, however, that among patients experiencing a first instance of psychosis, like Fields, a significant percentage ultimately were diagnosed with substance-induced psychosis. Dr. Witczak reiterated that she had ruled out alcohol induced psychosis in this case.

The State called two witnesses to testify: Charisse Chappell, Ph.D. (“Dr. Chappell”), who was accepted as an expert in psychiatry, psychology, and the ability to conform criminal behavior, and Turner. Dr. Chappell completed a seven-page report detailing her findings, which was admitted in evidence. She concluded that Fields did not meet the diagnostic criteria for any recognized psychiatric diagnosis at the time of the offenses and, consequently, that he was criminally responsible. She based this determination on her interview with Fields and her review of police reports and records from the Talbot County Detention Center, where Fields was detained pretrial. She noted that he made appropriate eye contact, his speech was normal, and there was no evidence that he was responding to internal stimuli. Dr. Chappell opined that her physical observations of Fields during his interview were consistent with a normal person without a psychiatric diagnosis.

On cross-examination, Dr. Chappell confirmed that she had not spoken to any of Fields’ family members, and she had not reviewed his police interviews from November 10, 2018. She stated that even if she reviewed those sources and agreed with Dr. Witczak’s determination that Fields was “responding to internal stimuli” on November 10, 2018, her opinion that he was criminally responsible would not change. She explained

that her conclusion was not based on the question of “if” Fields was responding to internal stimuli, but rather “why” Fields was responding to internal stimuli. Review of those sources would not rule out voluntary intoxication as the cause. She explained that before she could diagnose Fields with any form of schizophrenia, she had to be able to rule out a substance induced psychosis because his symptoms were more consistent with that diagnosis given that they began and ended within 24 hours.

Turner testified that Fields and Donaldson were at his house on November 10, 2018. The three men socialized, and Fields talked and behaved normally. Fields did not give any indication that he was hearing voices. Later, Donaldson went to the bathroom, and Turner went to the kitchen. While Turner was in the kitchen, Fields walked in, grabbed a butcher knife, and stabbed Turner in the chest with the knife. Turner yelled for Donaldson, who came running into the kitchen. The two men physically fought in the kitchen and ultimately ended up outside. Turner followed them and observed Fields stabbing Donaldson. Turner attempted to stop Fields’ attack on Donaldson, at which point Fields then began stabbing Turner again. On cross-examination, Turner stated that he had no animosity towards Fields and, as far as he knew, Fields had none toward him.

The court scheduled a second hearing for the parties to present argument. At that hearing, defense counsel maintained that “acute intoxication” was not a “plausible explanation” based on the evidence and there was no evidence of any animosity between Fields and the victims. Consequently, he argued that the court should find Fields not criminally responsible under one of two theories: 1) that he was experiencing a psychotic

episode arising from an unspecified schizophrenic disorder, consistent with Dr. Witzak’s testimony and report, or 2) that he was experiencing substance-induced psychosis not triggered by acute intoxication, but due to long-term alcohol dependency and use.⁸

In response, the State argued Dr. Witzak’s methodology was flawed, focusing on her decision to meet with Fields on four occasions over six months and certain “leading questions” she posed to him. The State argued there were several possibilities for why Fields committed the offenses: 1) he was a person who was “inclined to do bad things” and acted for unknown reasons; 2) he was in a psychotic state due to voluntary intoxication; 3) that he was suffering from a short-term, substance-induced psychosis though not acutely intoxicated; or 4) he was experiencing unspecified schizophrenia, as Dr. Witzak concluded. In the State’s view, under settled Maryland law, only the fourth possibility would satisfy the threshold criterion of a mental disorder for an NCR defense. The prosecutor argued that the evidence did not support Dr. Witzak’s diagnoses, for the reasons outlined by Dr. Chappell.

Even if the court were to find that Fields had a qualifying mental disorder, however, the State maintained that he had failed to meet his burden to demonstrate that he either was unable to appreciate the criminality of his conduct or was unable to

⁸ Defense counsel acknowledged that Dr. Witzak ruled out the latter theory but argued that the court still could make that finding based upon the evidence before it and based upon Dr. Chappell’s testimony. Defense counsel also acknowledged that a psychotic episode triggered by acute alcohol consumption would not qualify as a mental disorder for purposes of NCR finding.

conform his conduct. As to appreciation of criminality, the State noted that Fields' in court testimony and his answers to Dr. Witczak's questions during his first three interviews established that he appreciated the criminality of his actions at the time he stabbed Turner and Donaldson. As to the ability to conform his conduct, the State emphasized the uncertainty in the evidence about *when* Fields heard voices telling him to stab Donaldson and/or Turner.

After setting out the applicable law, the court ruled as follows:

The Defendant has the burden by a preponderance of the evidence, which basically means they tip the scales ever so slightly in their favor. In making the determination the Court—I have reviewed the records, the reports, and I've had to give a lot of thought to the initial determination of a mental disorder And the facts, at least as it relates to Mr. Fields, is prior to this incident, and when I say incident, we're starting the night before and I'll say through arrest and interview by law-enforcement. Prior to that there's no documented history of mental abuse or mental disorder.

He testified here in court, he provided testimony to Dr. Witczak and Dr.—not testimony, but a statement to them, Dr. Witczak on four different occasions, Dr. Chappell on one occasion. He provided self-assessment to the Talbot County Detention Center, the records I have, in which he never documented any substance abuse, I mean any mental disorder prior to this incident. And, in effect, no mental disorder after this incident other than in his fourth interview he said to Dr. Witczak that he's been hearing the voices.

Now, on the one hand he says to Dr. Witczak at the fourth interview that he's been hearing the voices since the incident, but yet no other evidence supports that including not seeking any help in confinement for any mental health issue, for hearing voices, for medication management, for anything else that would lead you to believe that there was an ongoing mental health issue.

His own testimony sort of put Dr. Witczak in a little bit of a pickle because her testimony was that the Defendant—that she relied—she stated she relied on his statement in the fourth interview that he had heard voices since the incident in forming her diagnosis that he had a mental disorder. But then stated that his statements in court were under oath, she would believe them if they were under oath and that she would give weight to

someone's statements that were given under oath, and that she confirmed that he had testified in court that he had not heard voices since the event.

In his interview with Dr. Chappell he never divulged any sort of mental disorder, external or internal stimuli that were going on pre or post event. So Dr. Chappell's conclusion was I can't get to a mental disorder or mental health diagnosis which would qualify him for a not criminally responsible outcome.

The court concluded that based on the evidence before it, including Fields' own testimony, it was not persuaded by Dr. Witsczak, and it found her substantive conclusions to be incorrect. The court did not believe Fields had a qualifying mental disorder at the time of the incident. Therefore, the court found, Fields was criminally responsible for the offenses. This timely appeal followed.

DISCUSSION

Pursuant to CP § 3-109(a), 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 either “appreciate the criminality of that conduct” or “conform that conduct to the requirements of law.” A “mental disorder” is “a behavioral or emotional illness that results from a psychiatric or neurological disorder.” CP § 3-101(g)(1). For the purposes of the criminal responsibility statute, it “does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct.” CP § 3-109(b). The defendant bears the burden of proving by a preponderance of the evidence the defense of not criminally responsible. CP § 3-110(b).

Fields contends that the circuit court's finding that he did not have a mental disorder was “both against the weight of the evidence and an incorrect application of the

law.” First, he contends that the trial court erred by not finding that he had unspecified schizophrenia both because it improperly discounted Dr. Witczak’s “much more thorough forensic investigation,” and relied upon a clearly erroneous finding that there was no evidence that Fields displayed signs of a mental disorder prior to or after November 10, 2018. Alternatively, he argues that the court erred by not finding that Fields was experiencing substance induced psychosis at the time of the offenses. As per this Court’s decisions in *Parker v. State*, 7 Md. App. 167 (1969), and *Porreco v. State*, 49 Md. App. 522 (1981), he asserts that he satisfied his burden to show that he suffered from a “settled” insanity caused by long-term alcohol abuse.

The State responds that because Fields bore the burden of production and persuasion, the fact that the trial court was not persuaded that he had a mental disorder does not amount to reversible error. It emphasizes that the court’s findings were not clearly erroneous and its credibility determinations are entitled to significant deference on appeal.

“[O]nce the State has proven that a defendant is guilty of the offenses charged, the defendant has the burden of proving by a preponderance of the evidence that he or she is not criminally responsible for the crime.” *Winters v. State*, 434 Md. 527, 538 (2013) (emphasis omitted). *See also Treece v. State*, 313 Md. 665, 684–85 (1988) (“[T]he burdens of pleading, producing evidence, and persuading the fact-finder that criminal punishment should not be imposed [under the NCR statute] are all borne by the defendant.”). In assessing if the circuit court erred by failing to find that Fields was not

criminally responsible, we review its factual findings for clear error. *Buck v. State*, 181 Md. App. 585, 647 (2008); Md. Rule 8-131(c). A trial court’s finding “‘is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.’” *In re M.H.*, 252 Md. App. 29, 45 (2021) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). In conducting our review, we “give due regard to the trial court’s opportunity to judge the credibility of the witnesses.” *Buck*, 181 Md. App. at 647 (cleaned up). Further, as we have explained,

[I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded. . . . *Mere non-persuasion . . . requires nothing but a state of honest doubt.* It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.

Starke v. Starke, 134 Md. App. 663, 680–81 (2000) (emphasis added).

In this case, the court was not convinced by Dr. Witczak’s opinion that Fields met the diagnostic criteria for “Unspecified Schizophrenia and Other Psychotic Disorder.” We recognize “[t]he weighing of testimony and evaluation of which experts’ opinions to credit are functions quintessentially best performed by the judge who hears the witnesses testify.” *Grimm v. State*, 232 Md. App. 382, 404 (2017). Here, the trial court was not persuaded by Dr. Witczak’s reasoning, in part, because she had relied on Fields’ statements during his fourth interview with her that he had continued to hear voices after November 10, 2018. The trial court emphasized that Fields’ statement during his fourth interview was inconsistent with his in-court testimony and the other evidence reviewed

by Dr. Witczak. Plainly, the court did not commit clear error by accepting Fields' in court testimony that he had not heard voices since November 10, 2018.

Likewise, the court did not clearly err by finding that Fields did not exhibit any symptoms of a mental disorder prior to November 10, 2018. Dr. Witczak testified and stated in her report that Fields denied any prior mental health symptoms, was never treated or hospitalized for mental health issues outside of the realm of substance abuse treatment, and never heard voices prior to November 10, 2018.

The court also did not err by rejecting the alternative theory raised by the defense that Fields experienced substance induced psychosis on November 10, 2018. Under Maryland law, voluntary intoxication that causes a temporary state of insanity while the defendant is under the direct influence of the intoxicant, but which ends when the intoxicating effect wears off, does not excuse responsibility for a criminal act. *Parker*, 7 Md. App. at 178–79. Conversely, “psychosis resulting from long, continued habits” of substance abuse may excuse criminal responsibility. *Id.* This Court has explained that if a defendant is “insane whether or not he is directly under the influence of an intoxicant, even though that insanity was caused by voluntary [substance abuse,]” then the insanity is deemed “permanent,” “fixed” or “settled” and may support an NCR defense. *Id.* at 179.

We applied these principles in *Porreca*, and held that the circuit court erred by ruling that a defendant failed to satisfy his burden of production by adducing evidence that when he committed the crimes he was experiencing a lengthy period of psychosis caused by his habitual use of PCP. 49 Md. App. at 523. Significantly, at the time of the

proceedings in *Porreca*, the law in Maryland placed the burden on the defendant to produce “competent evidence sufficient to raise a reasonable doubt as to his sanity,” the sufficiency of which was to be determined as a legal issue by the court. *Id.* at 523, n.1. If the defendant met that threshold burden, the presumption of sanity was rebutted, and the burden shifted to the State to prove beyond a reasonable doubt that the defendant was sane. *Id.* Because the defense expert’s opinion that Porreca suffered from a “settled, although not permanent insanity” at the time of the crimes satisfied his threshold burden, we reversed the conviction and remanded for a new trial. *Id.* at 528, 530.

Since *Parker* and *Porreca* were decided, however, the law changed to lower the evidentiary burden to the preponderance of the evidence standard and to place the burden of production *and persuasion* on the defendant. *State v. Johnson*, 143 Md. App. 173, 179 (2002); Crim. Pro. § 3-110(b). Thus, our focus is not whether Fields met his burden of production, but whether the trial court erred by concluding that it was not persuaded that Fields was acting under a fixed or settled psychosis caused by his habitual alcohol abuse. We hold the court did not err in this regard given that Fields’ expert witness ruled out that diagnosis, and the State’s expert concluded that there was insufficient evidence to determine that Fields met the diagnostic criteria.

**JUDGMENTS OF THE
CIRCUIT COURT FOR
WICOMICO COUNTY
AFFIRMED. COSTS TO BE
PAID BY THE APPELLANT.**