

BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 22-CM-898

RONALD MAZIARZ,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

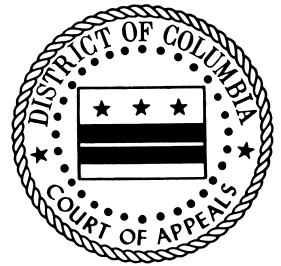
APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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Issues Presented

I. Whether the trial court abused its discretion in failing to inquire *sua sponte* into Maziarz's ability to waive an insanity defense, where (1) *Frendak v. United States*¹ has been undermined and should not be followed; (2) the record did not raise a substantial question of Maziarz's sanity at the time of the offense; (3) Maziarz and his counsel were informed of the availability of the insanity defense; (4) Maziarz subsequently declined to plead not guilty by reason of insanity; (5) the trial judge discredited Maziarz's trial testimony that a demon compelled him to assault a taxi driver; and (6) Maziarz has not stated that, if given the opportunity, he would plead not guilty by reason of insanity.

II. Whether this Court should remand with instructions to vacate Maziarz's conviction for possession of a prohibited weapon (hammer) (PPW(b)) and to enter a judgment against Maziarz on the lesser-included offense of attempted PPW(b), where (1) the trial court erred by not trying the PPW(b) charge before a jury or obtaining a waiver;

¹ 408 A.2d 364, 380 (D.C. 1979).

and (2) attempted PPW(b) is a non-jury demandable offense that is subsumed within the proof of PPW(b).

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COUNTERSTATEMENT OF THE CASE

On August 9, 2021, appellant Ronald Maziarz was charged by information with simple assault (SA) and possession of prohibited weapon (PPW(b)), in violation of D.C. Code § 22-404, and D.C. Code § 4514(b), respectively (Record on Appeal (R.) 1). After a bench trial conducted on November 15, 2022, the Honorable Robert D. Okun convicted Maziarz of both charges (R. A at 17). That same day, Judge Okun sentenced Maziarz to suspended concurrent sentences of 180 days’

incarceration for each count, placed Maziarz on 18 months' supervised probation, and ordered Maziarz to pay \$100 to the Victims of Violent Crime Fund (R. 17). On November 25, 2022, Maziarz filed a timely notice of appeal (R. 18).

The Trial

The Government's Evidence

Mulushewa Alemu testified that on August 21, 2021, he was driving a taxicab in Washington, D.C. when, between 7:00 and 7:40 a.m., Maziarz approached him on 14th Street, NW and asked to be driven to an apartment building located at 1845 Harvard Street (11/15/22 Tr. 12-13, 22-23, 34-36). Alemu drove Maziarz to the building, and Maziarz asked Alemu to wait outside (*id.* at 14). Maziarz went into the building and returned several minutes later carrying "one or two . . . big bags" (*id.*). He reported that "they kick[ed] him out from [the] apartment," and asked Alemu to drive him to a shelter on New York Avenue (*id.*). Alemu started driving Maziarz toward the shelter, but before they arrived Maziarz asked Alemu to drive him back to the Harvard Street apartment (*id.*).

When they returned to the Harvard Street apartment building, Alemu heard rustling in the back seat (11/15/22 Tr. 14). Maziarz then hit

Alemu on the jaw with a hammer “probably three” times (*id.* at 14-15). Alemu briefly lost consciousness, then wrestled the hammer from Maziarz and shouted to passersby to call 911 (*id.* at 15-18). Alemu’s zygomatic bone was fractured and he received a cut on his leg during the attack (*id.* at 18-19).

A bystander called police; Metropolitan Police Department Officer Alphonzo Lopez Martinez responded to the scene and found Maziarz sitting on top of a luggage bag (11/15/22 Tr. 43-44). Maziarz told Officer Martinez that he hit Alemu, and that he was “depressed” (*id.* at 44).

The Defense Evidence

Maziarz testified he brought a bag full of tools into the cab with him when he rode with Alemu (11/15/22 Tr. 53-54). After Alemu asked for the fare, Maziarz saw “two demons . . . possessing” him (*id.* at 54). Maziarz reached into the bag, retrieved a hammer, and “railed [sic] [Alemu] on the side of his head” (*id.* at 54-55). Maziarz “kept getting possessed” and “it had full control” of him (*id.* at 55). Maziarz did not want to hit Alemu and “didn’t mean for it to happen” (*id.* at 55-56). Maziarz was not “strong enough to fight the demon” because he “had no food” in his body (*id.* at 56-57). The driver eventually took the hammer from Maziarz, hit himself

in the head, and said that Maziarz “didn’t hit him hard enough” (*id.* at 58).

Maziarz denied telling the police that he swung the hammer at Alemu (11/15/22 Tr. 60). Maziarz was impeached with Gov. Exh. 4, which was an excerpt of body worn camera video that recorded Maziarz telling a police officer that he “tried to hurt the cab driver . . . because [he] was depressed” and had been put out of a homeless shelter (11/15/22 Tr. 62-63).² Maziarz testified that he “never did swing the hammer[;] [he] rub[bed] the hammer on the side” of Alemu’s face (*id.* at 59). Maziarz reiterated that it “wasn’t [his] intention to hit” Alemu (*id.* at 63).

The Trial Court’s Findings and Verdict

In convicting Maziarz of both simple assault and PPW(b), Judge Okun credited Alemu’s testimony that Maziarz hit him in the face with the hammer, and discredited Maziarz’s testimony that he “merely rubbed” the hammer against Alemu’s face (11/15/22 Tr. 78-79).

² Gov. Exh. 4 was not received into evidence (see 11/15/22 Tr. 62-63). The defense did not object to playing Gov. Exh. 4 for the court (see *id.*). The government has moved to supplement the record with a copy of Gov. Exh. 4.

Judge Okun stated that the “real issue” was whether Maziarz voluntarily and intentionally assaulted Alemu, and whether he possessed the hammer with the intent to use it unlawfully against Alemu (11/15/22 Tr. 80). The trial court characterized Maziarz’s defense that demons forced him to attack Alemu as either an insanity defense or a diminished capacity defense (*id.*). The court ruled that Maziarz did not give proper notice to raise an insanity defense, so he was prohibited from raising the defense at trial (*id.*). Judge Okun added that he “tend[ed] to agree” with the government that Maziarz’s defense that demons forced him to attack Alemu amounted to a diminished capacity defense, which is not properly raised in this jurisdiction (*id.* at 80-81).

However, Judge Okun ruled that he was not required to “conclusively decide” the contours of Maziarz’s defense because he did not “credit [Maziarz’s] testimony that he hit [Alemu] because of the demons that he allegedly was seeing right before the attack” (11/15/22 Tr. 81). Judge Okun found that Maziarz’s testimony was “completely contradicted” by his statement to the police, which he gave “just moments after” he attacked Alemu (*id.*). The trial court found that Maziarz did not tell the police that demons compelled him to attack Alemu; instead, in an

apparent reference to the body worn video recording of Maziarz's on-scene statements, the court found that he told police that he was "depressed" because he was going to be evicted (*id.* at 81-82). Accordingly, the court found that it was not required to decide if Maziarz's defense that demons forced him to attack Alemu was a permissible inanity defense or a prohibited diminished capacity defense, because "that's not what happened in this case" (*id.* at 82). Instead, Judge Okun found that Maziarz "knowingly and voluntarily assaulted [Alemu] and that he knowingly and voluntarily possessed the hammer with the intent to use it unlawfully against" Alemu (*id.*).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in failing to inquire into Maziarz's ability to waive an insanity defense, because (1) *Frendak* has been undermined, and should not be followed; (2) the record did not raise a substantial question of Maziarz's sanity at the time of the offense; (3) Maziarz and his counsel were informed of the availability of the insanity defense; (4) Maziarz subsequently declined to plead not guilty by reason of insanity; (5) the trial judge discredited Maziarz's trial testimony that a demon compelled him to assault a taxi driver; and (6) Maziarz has not

stated that, if given the opportunity, he would plead not guilty by reason of insanity.

The Government concedes that the trial court erred in failing to order sua sponte that absent a waiver, Maziarz's PPW(b) charge be tried before a jury. Accordingly, this Court should remand with instructions to vacate Maziarz's conviction for PPW(b) and to enter a judgment on the lesser-included offense of attempted PPW(b), which is not jury-demandable.

ARGUMENT

I. The Trial Court Did Not Abuse its Discretion in Failing to Conduct a *Frendak* Inquiry.

Maziarz argues (at 20) that based on his "bizarre pretrial behavior, the record of his significant mental health issues, and the evidence of his conduct at the time of the offense, the trial court had ample evidence suggesting a substantial question of Mr. Maziarz's sanity at the time of the charged offense." Maziarz's argument is without support.

A. Standard of Review and Legal Principles

"[T]he law presumes that everyone charged with a crime is sane," *Davis v. United States*, 160 U.S. 469, 486 (1895), and, in this jurisdiction,

“the defendant has the burden of proving insanity by a preponderance of the evidence.” *Patton v. United States*, 782 A.2d 305, 311 (D.C. 2001) (citing D.C. Code § 24-501(j)). To establish a prima facie case of insanity, a defendant must show that “at the time of such conduct as a result of a mental disease or defect he lacked substantial capacity either to recognize the wrongfulness of his [or her] conduct or to conform his [or her] conduct to the requirements of law.” *Bell v. United States*, 950 A.2d 56, 66 (D.C. 2008) (cleaned up); *Bethea v. United States*, 365 A.2d 64, 79 (D.C. 1976) (same). The existence of a mental disease or defect, without more, does not suffice. A defendant must establish “a causal relationship between the criminal conduct and his mental disease.” *Pegues v. United States*, 415 A.2d 1374, 1378 (D.C. 1980).

Currently, when there is a substantial question of a defendant’s sanity at the time of a crime, the trial court is obliged to conduct an inquiry designed to ensure that a defendant has been fully informed of the alternatives available, comprehends the consequences of failing to assert an insanity defense, and freely chooses to raise or waive that defense. *Freundak v. United States*, 408 A.2d 364, 380 (D.C. 1979). “The trial judge’s decision whether to conduct a *Freundak* inquiry is reviewed

for abuse of discretion.” *Patton v. United States*, 782 A.2d 305, 312 (D.C. 2001) (cleaned up). The scope of the inquiry “will vary according to the circumstances present in each case, especially in relation to the background and condition of the defendant.” *Freundak*, 408 A.2d at 380. “[E]ven when there are ‘many hints of appellant’s possible mental illness,’ a trial court does not abuse its discretion in failing to conduct a *Freundak* inquiry during trial when it has ‘conflicting information regarding appellant’s mental condition.’” *Gorbey v. United States*, 54 A.3d 668, 695 (D.C. 2012) (quoting *Patton*, 782 A.2d at 314).

B. Additional Information

At his arraignment on August 9, 2021, Maziarz repeatedly told the Honorable Judith Pipe that he was “homeless,” had “nowhere to stay,” he could not “keep [him]self clean,” he was “in malnutrition,” he did not have any family or friends, and his life was “unmanageable” (8/9/21 Tr. at 6-8). When Judge Pipe stated that she was releasing him and suggested that he visit the courthouse health clinic for help obtaining services, Maziarz responded that his “resistance is low” and that he did not “know if [he was] going to be alive tomorrow” (*id.* at 5, 8). Maziarz did not report that he had been controlled by demons during the offense (see *id.* at 3-8).

A status hearing was convened on February 7, 2022, because Maziarz had been involuntarily hospitalized, apparently for mental health reasons, although the precise reasons were not placed on the record (2/7/22 Tr. 2-4). Maziarz, who had been released by the hospital on January 4, 2022, appeared late and by telephone (*id.* at 5). Maziarz did not claim to be controlled by demons (see *id.* at 5-8).

At a February 25, 2022, status hearing, the Honorable Steven Wellner ordered Maziarz to report to the District of Columbia Department of Behavioral Health (DBH) for a preliminary competency screening, which resulted in an opinion that he was not competent to stand trial (R. 10; R. 11 at 3). Maziarz did not report that he had been controlled by demons (see 2/25/22 Tr. 3-7).

At a March 18, 2022, status conference, based on the results of DBH's preliminary competence screening, the trial court found Maziarz incompetent to stand trial, and ordered a full competency evaluation (3/18/22 Tr. 3-4). Again, Maziarz did not report that he had been controlled by demons (see 3/18/22 Tr. 2-7).

At an April 29, 2022, status conference, Judge Wellner accepted the results of the April 18, 2022, full competency evaluation, in which DBH

opined that Maziarz was competent to stand trial (R. 13 at 1). The DBH evaluator observed “significant symptoms of depression and anxiety,” but observed that those were “related to the [pending] case and [its] potential consequences” (*id.* at 4). The report noted that Maziarz had “significant medical and mental health needs” but did not state that Maziarz reported that he had been controlled by demons (see *id.*). Judge Wellner found that Maziarz was competent to stand trial 4/29/22 Tr. 3). Maziarz did not report that he had been controlled by demons (see *id.* at 2-6).

At a May 27, 2022, status hearing, the parties discussed whether Maziarz satisfied the eligibility criteria for admission into Mental Health Community Court (MHCC)³ (see 5/27/22 Tr. 2-10). Once again, Maziarz did not report that he had been controlled by demons (see *id.*).

³ The MHCC is a voluntary, specialized court that focuses on criminal defendants who have been charged with certain misdemeanor or low-level felony offenses and who have been diagnosed with a serious and persistent mental illness, or with mental illness and co-occurring substance abuse disorders. See <https://www.dccourts.gov/sites/default/files/matters-docs/MentalHealthCommunityCourtCaseManagementPlan.pdf> at 1-2. Defendants who fulfill MHCC requirements are eligible to have their cases resolved through one of several types of diversion programs, including possible dismissal of all charges. See *id.* at 3-4.

At a June 10, 2022, status hearing, the parties discussed transferring Maziarz's case to MHCC (6/10/22 Tr. 2-5). Again, Maziarz did not report that he had been controlled by demons (see *id.*).

At a June 16, 2022, status hearing that was conducted to determine whether Maziarz was eligible to enter MHCC, the Honorable Craig Iscoe asked Maziarz if he wanted to enter MHCC, and Maziarz responded, "It's a whole lot. It's a whole lot on me." (6/16/22 Tr. 14.) Judge Iscoe asked defense counsel if Maziarz needed more time to consider his options, and defense counsel responded that Maziarz "does very easily become overwhelmed" (*id.* at 15). After additional discussion between the trial court, the lawyers, and a representative from Pretrial Services, Judge Iscoe asked defense counsel whether he had "any reason to be requesting a 24-hour forensic return" (6/16/22 Tr. 19). Defense counsel responded, "No, Your Honor. [Maziarz] just gets easily overwhelmed." (*Id.*) Defense counsel added that there were "mental health issues, no doubt about it [but] [a]s far as his competence goes, no, I don't think there's an issue" (*id.*). Again, Maziarz did not report that he had been controlled by demons (see *id.*).

When the parties reconvened on June 28, the Pretrial Services representative reported that Maziarz was “doing well,” and Maziarz was “formally admitted” to MHCC (6/28//22 Tr. 2, 8). Once again, Maziarz did not report that he had been controlled by demons (see *id.* at 2-10).

On July 26, 2022, the parties appeared before the Honorable Gregory Jackson to schedule a date on which Maziarz would enter a guilty plea, as a prerequisite to entering MHCC (7/26/22 Tr. 8). Maziarz again did not report that he had been controlled by demons (see *id.* at 2-10).

On August 4, 2022, Maziarz appeared before Judge Iscoe to plead guilty to simple assault, pursuant to a deferred sentencing agreement, as a condition of his entry into Mental Health Court (8/4/22 Tr. 5). After the prosecutor read the statement of facts, Maziarz stated for the first time that he had been “possessed” by a “demon” during the attack, and that he “couldn’t stop” the hammer from hitting the victim because of “some kind of force” (see *id.* at 7-12). Judge Iscoe responded, “I’m concerned that there’s a valid insanity defense” (*id.* at 14). Judge Iscoe, Maziarz, and defense counsel Joseph Molina then had the following exchange:

THE COURT: Mr. Maziarz, I want to make it clear. There’s something called an insanity defense. I’m not saying it would

work, but if you and the demon did something, I can't accept a plea. I can accept a plea only if you are willing to accept responsibility. And if you –

MR. MAZIARZ: I accept the responsibility.

THE COURT: Well, tell me what happened then. Did you hit the cab driver with the hammer?

MR. MAZIARZ: Yes.

THE COURT: Okay. And you said there [was] a demon involved.

MR. MAZIARZ: It was a virus.

THE COURT: Oh, a virus. Could you have stopped hitting the cab driver with the hammer if you wanted to stop?

MR. MAZIARZ: Yes.

THE COURT: Did you want to stop at that time?

MR. MAZIARZ: Yes.

THE COURT: You wanted to stop? Did the virus – is the virus what made you hit him?

MR. MAZIARZ: Yes.

THE COURT: Okay. I believe there's a valid insanity defense. I'm not saying it would prevail. But, Mr. Molina, under these facts I don't think I can accept the plea. You agree based on these answers?

MR. MOLINA: Your Honor, nobody is going to accuse this Court for not having given the time. So I think what we do at

this point is can we just calendar it on a misdemeanor calendar? (*Id.* at 15-16.)

Judge Iscoe then reiterated that:

[J]ust so we're clear, I think there's a valid insanity defense that's up for – to [the] finder of fact to determine if there's an articulate [sic] insanity defense. It's up to the finder of fact to determine whether it's – will be successful or not. I'm not making any determination in either direction, but if there is one, I can't accept the plea. (8/4/22 Tr. 16-17.)

Judge Iscoe then transferred the matter back to the trial calendar (*id.* at 17).

At a status hearing on August 24, 2022, Judge Wellner reviewed Maziarz's August 4, 2022, statements, and based on those statements, ordered a third competency screening (8/24/22 Tr. 3-9). The insanity defense was not raised by either party (*see id.*). On September 7, 2022, based on a DBH report, Judge Wellner found Maziarz competent to stand trial (9/7/22 Tr. 3). Maziarz did not state in court that he had been controlled by demons (*id.* at 3-9).

On November 15, 2022, the matter was called for trial before the Honorable Robert D. Okun (11/15/22 Tr. 4). The Government observed that Maziarz had not given notice of an intent to plead not guilty by reason of insanity, and the government moved in limine to bar assertion

of a diminished capacity defense (*id.* at 5). Defense counsel responded, “It’s not necessarily diminished capacity per se. It goes to intent.” (*id.*)

Judge Okun responded,

I’ll hear it when I hear it. I mean to the extent that it is what would be considered a diminished capacity defense, that isn’t recognized in here. But to the extent that whatever mental health issues you might raise affect his intent, I’ll see whether I think it’s – (*Id.*)

Defense counsel interrupted to explain that “there are bits of (indiscernible) [sic] and an irresistible impulse? Police and the elbow, that type of thing. I leave it to the trier of fact” (*Id.*)

At trial, Maziarz testified that a demon compelled him to attack Alemu (11/15/22 Tr. 54-55). He was impeached with his recorded on-scene statement to the police that he attacked Alemu because he was depressed, and did not report that demons compelled the attack (*id.* at 61-64 & Gov. Exh. 4).

In convicting Maziarz, Judge Okun discredited his testimony that a demon compelled him to attack Alemu (11/15/22 Tr. 81). The trial court found that this testimony was “completely contradicted” by Maziarz’s on-scene statements to the police, so the court did not “believe” the testimony (*id.*). The court found that Maziarz’s claim that demons compelled the

attack was further undercut by the fact that it “seemed to be so important” to Maziarz in court to report that demons compelled the attack, but he did not “mention them at all just moments after the attack” (*id.* at 81-82). Instead, Maziarz told the police that he attacked Alemu because he was depressed because he had been evicted (*id.* at 82). The court concluded that because it did not credit Maziarz’s testimony, it need not decide whether Maziarz’s defense constituted a diminished capacity defense (*id.* at 81).

C. Discussion

1. This Court Should No Longer Follow *Freundak*.

As the United States has argued in several earlier cases, this Court should no longer follow *Freundak* because the philosophical basis for the decision has been undermined. *See, e.g., Byrd v. United States*, 16-CF-809, Brief for Appellee at 17-18 (Nov. 6, 2017) and *Howard v. United States*, 16-CM-109, Brief for Appellee (Sept. 12, 2016). The United States Court of Appeals for the District of Columbia Circuit has overruled *Whalem v. United States*, 346 F.2d 812 (D.C. Cir. 1965), the foundation for *Freundak*. *See United States v. Marble*, 940 F.2d 1543, 1547 (D.C. Cir. 1991). Additionally, *Whalem* had been undermined by *North Carolina v.*

Alford, 400 U.S. 25 (1970), and *Faretta v. California*, 422 U.S. 806 (1975), both of which recognized the primacy of a defendant's tactical choices, and upon which *Marble* also relied. *See Marble*, 940 F.2d at 1546.

Marble undermines a central rationale of *Frendak*: the idea that courts have the discretion to impose an unwanted insanity defense. The District of Columbia Circuit left no room for judges to impose the defense on a competent defendant who declines it. Unlike *Frendak*, *Marble* freed a competent defendant to make this trial decision, with the assistance of counsel, but with no additional inquiry as to his level of competence. Moreover, in *Godinez v. Moran*, 509 U.S. 387 (1993), the Supreme Court rejected the notion that competence to plead guilty or to waive the right to counsel must be measured against a standard higher than the standard ordinarily applied to determine whether a defendant is competent to stand trial. *Id.* at 398. Thus, the twin assumptions underlying *Frendak* – that competent defendants could not be permitted to forgo an insanity defense without interference from the court, and that competency to waive the insanity defense is different from competency to make various tactical decisions though the plea and trial process – have been undermined. Accordingly, this Court should recognize the erosion of

Freundak's rationales and decline to follow it, and should therefore reject Maziarz's argument that the trial court erroneously failed to conduct a *Freundak* inquiry.

2. The Trial Court Did Not Abuse Its Discretion in Failing to Conduct a *Freundak* Inquiry Because There Was Not a Substantial Question as to Maziarz's Sanity at the Time of the Offense.

Assuming *Freundak*'s continued viability, Judge Okun did not abuse his discretion in failing to conduct a *Freundak* inquiry because he found that there was not a substantial question of Maziarz's sanity at the time of the offense. Maziarz argues (at 23-26) that the "early pretrial record raised a substantial question of Mr. Maziarz's sanity," but Maziarz never stated that "demons" impelled him to attack Alemu, or said anything to raise a substantial question of his sanity *at the time of the offense* prior to the August 4, 2022, plea hearing. Maziarz argues (at 10, 24) that his statements at the arraignment were so "concern[ing]" that Judge Pipe referred Maziarz to urgent care doctors in the courthouse and raised "serious concerns about his mental health." However, Judge Pipe reasonably interpreted Maziarz's statements that he was "on the streets"

and could not “get any food and stuff” to be a plea for help, and accordingly gave references so that Maziarz could obtain services, such as food and housing (see 8/9/21 Tr. 3-6). Similarly, taken in context, Maziarz’s statement that he “d[id]n’t know if [he was] going to be alive tomorrow” (*id.* at 8), is properly interpreted a statement of frustration at his predicament. Maziarz’s statements were in no way suggestive that he was unable to control his conduct or appreciate the wrongfulness of his conduct at the time of the offense. *See Bethea*, 365 A.2d at 79.

Maziarz argues (at 25-26) that his in-person mental health treatment in late-2021 “raised a substantial question” about his sanity on the day of the incident. However, concerns about overall mental health do not necessarily trigger a *Frendak* inquiry. *See Gorbey*, 54 A.3d at 695.⁴ Similarly, Maziarz suggests (at, e.g., 25) that questions about his competence raised a substantial question about his sanity at the time of the offense. However, not only are competency and sanity separate

⁴ Indeed, the requirement that a defendant plead guilty as a prerequisite for entry into MHCC demonstrates that, in creating MHCC, the legislature recognized that mental health issues alone do not absolve a defendant of criminal responsibility. *See* <https://www.dccourts.gov/sites/default/files/matters-docs/MentalHealthCommunityCourtCaseManagementPlan.pdf> at 1-2.

issues, but Maziarz did not blame his behavior on demons or other outside forces in either of his two competency evaluations, which were completed on March 12, 2022, and April 18, 2022, respectively (see R. 11 at 2-3; R. 13 at 3). Furthermore, Maziarz told one of the evaluators that he was “depressed,” which is consistent with his explanation for attacking Alemu (see R. 13 at 3; 11/15/22 Tr. 44). Ultimately, Maziarz did not make any comments or engage in any behavior that suggested the presence of a mental illness or defect that deprived him of the substantial capacity to recognize the wrongfulness of his act or to conform his conduct to the requirements of the law in any of the eleven court appearances or status conferences that he attended before the August 4, 2022, plea hearing (see, e.g., 8/9/21 Tr. 2-8; 11/15/21 Tr. 2-4; 4/29/22 Tr. 2-6; 5/27/22 Tr. 2-10; 6/10/22 Tr. 2-5; 6/16/22 Tr. 2-27; 6/28/22 Tr. 2-10; 7/26/22 Tr. 2-14). *See Bethea*, 365 A.2d at 79.

Maziarz argues (at 26-27) that his statement during the August 4, 2022, plea hearing that demons forced him to attack Alemu triggered a requirement for a *Frendak* inquiry. However, after Maziarz told Judge Iscoe that demons made him attack Alemu, Judge Iscoe immediately and repeatedly advised Maziarz that the insanity defense might be available

to him, and accordingly refused to accept the guilty plea (see 8/4/22 Tr. 7-17). Judge Iscoe's warnings clearly made Maziarz aware of the availability of the insanity defense, and so any error in not inquiring further was harmless. *See Frendak*, 408 A.2d at 380 (no specific type of inquiry required; scope of the inquiry "will vary according to the circumstances present in each case, especially in relation to the background and condition of the defendant").

Furthermore, Maziarz subsequently declined on two separate occasions to plead not guilty by reason of insanity (see 11/15/22 Tr. 4 (defense counsel confirmed that Maziarz was not asserting insanity defense); 9/7/22 Tr. 3-4 (defense counsel explained that "the reasons the [trial c]ourt can't accept the plea [at the September 7 hearing] would be one of the reasons [Maziarz] would have as a defense of the case"; Judge Wellner responded, "if he wants to raise that as a defense then he can," and defense counsel responded, "Yeah")). Thus, the record is clear that Maziarz was aware of the availability of the insanity defense, yet declined to assert it.

Maziarz argues (at 27-28) that the trial evidence "squarely raised a substantial question" of his sanity, but he is incorrect. Judge Okun

discredited Maziarz's testimony that a "demon" forced him to attack Alemu, because "moments after the attack" Maziarz told police that he attacked Alemu "because he was depressed" over his eviction from a homeless shelter (11/15/22 Tr. 44, 81-82). Judge Okun found that Maziarz's statement to the police immediately after the attack was "what he said and that's what I credit," and found that Maziarz's statement to the police was "contrary to what he said . . . in court" (*id.*). Because Judge Okun's credibility determination was supported by the record (see *id.* at 44), Maziarz cannot show that Judge Okun's finding was clearly erroneous, or that his testimony at trial presented a substantial question of Maziarz's sanity at the time of the offense. See *Bell*, 950 A.2d at 67-68 ("burden is on the defendant to show that he has a substantial insanity defense"). Cf. *Walker v. United States*, 167 A.3d 1191, 1210 (D.C. 2017) (credibility determinations are "virtually unreviewable") (cleaned up).

Maziarz's argument (at 34) that there "simply was no sane motivation" for attacking Alemu was undercut by his explanation that he attacked Alemu because he was depressed over being evicted from his homeless shelter. Moreover, because he bears the burden to prove insanity, the government was not required to demonstrate a "sane

motivation” for attacking Alemu. *See Bell*, 950 A.2d at 67-68. *See also Workman v. United States*, 15 A.3d 264, 269 (D.C. 2011) (government not required to prove motive).

Maziarz argues (at 28-29) that Judge Okun considered Maziarz to have forfeited the insanity defense, but that argument misreads the record. When he rendered his verdict, Judge Okun observed that Maziarz has “failed to give notice[,] so that [defense] shouldn’t be allowed in trial” (see 11/15/22 Tr. 80). However, Judge Okun also found that the “real issue” was whether Maziarz had presented a diminished capacity defense, which is not allowed in this jurisdiction (*id.* at 80-81). Judge Okun then concluded that he was not required to “conclusively decide” the issue because, after having heard the evidence, he did not “credit [Maziarz’s] testimony that he hit [Alemu] because of the demons” (*id.* at 81). Thus, Judge Okun did not rule that the insanity defense was forfeited through inaction, but rather that he did not need to address the issue because he discredited Maziarz’s testimony. *Cf. Walker*, 167 A.3d at 1210.

Briggs v. United States, 525 A.2d 583 (D.C. 1987), relied on extensively by Maziarz, does not compel a different result. In *Briggs*, the

defendant filed a “flood of bizarre letters and pro se pleadings,” three different psychiatrists raised “serious questions” about his competency to stand trial, the defendant refused to cooperate with court-ordered productivity examinations, and the trial court itself “expressed concerns about productivity.” *Id.* at 592-93. Acknowledging that there are circumstances where a “legitimate question of competency to stand trial does not imply” a need for a *Frendak* inquiry, the trial court’s productivity concerns, competency examinations that indicated long-term mental illness, and the fact that the defendant “resisted every inquiry into a possible insanity defense,” mandated a *Frendak* inquiry. Here, by contrast, psychiatrists determined that Maziarz was competent to stand trial, Maziarz cooperated with the doctors, and the trial court discredited Maziarz’s testimony that demons compelled his actions. Moreover, *Briggs* also held that, on remand, if there is a productivity examination and the trial “court concludes, after an appropriate review, that there is insufficient evidence to raise a fact issue of productivity, the convictions shall stand.” *Id.* at 595. Here, as noted above, Judge Okun considered the evidence and determined that Maziarz was criminally responsible for his

conduct. On this record, Maziarz cannot show that the trial court abused its discretion in not conducting a *Freundak* inquiry *sua sponte*.

Finally, Maziarz does not claim that if this case is remanded, he would assert an insanity defense (see Maziarz Brief at 35 (seeking a “remand to the trial court for further proceedings to determine if Mr. Maziarz would intelligently and voluntarily reject an insanity defense”)). This Court observed in *Freundak* that there are “persuasive reasons why defendants convicted of an offense may choose to accept the jury’s verdict rather than raise a potentially successful insanity defense inquiry, [one of which is that an] insanity acquittal will result in the institution of commitment proceedings which lead to confinement in a mental institution for a period longer than the potential jail sentence.” *Freundak*, 408 A.2d at 376. That is particularly the case here, where Maziarz twice declined to assert the insanity defense below, and where Judge Okun imposed concurrent 180-day suspended sentences (R. 17). In addition to the reasons already stated, because Maziarz does not claim that he would plead not guilty by reason of insanity, which could lead to a period of involuntary commitment, his *Freundak* claim should be rejected. See *Patton*, 782 A.2d at 309 (Patton “had no interest in pleading insanity

because he did not believe he was insane and because of the indefinite confinement that could result”).

II. The Court Should Remand the Conviction for Possession of a Prohibited Weapon With Instructions to Vacate the Conviction and Enter Judgment on the Lesser-Included Offense of Attempted Possession of a Prohibited Weapon.

Maziarz argues (at 31-35) that, because he was tried by the court, and he never waived his right to a jury trial, his PPW(b) conviction should be reversed.⁵ The government acknowledges that PPW(b) is a jury-

⁵ D.C. Code § 16-705(b-1) provides that, if one of several charged offenses is jury demandable, then all charged offenses shall be presented to the jury. Thus, under § 16-705(b-1), Maziarz also was entitled to a jury trial on the assault count. However, Maziarz does not challenge his assault conviction and, therefore, has waived any claim in that regard. *See Rose v. United States*, 629 A.2d 526, 535-36, n.19 (D.C. 1993) (citing *United States v. McNeil*, 911 F.2d 768, 772 (D.C. Cir. 1990)). In any event, because we propose that the PPW(b) conviction be vacated and replaced with a conviction for the non-jury-demandable charge of attempted PPW(b), on remand Maziarz would not be entitled to a jury trial on the simple assault charge, and thus there is no basis to disturb that conviction. *See Davis v. United States*, 984 A.2d 1255, 1260-61 (D.C. 2009) (defendant convicted of simple assault and PPW(b) was erroneously denied a jury trial; by thereafter vacating the PPW(b) conviction, the trial court “eliminat[ed] the only feature of the case that gave appellant a (statutory) right to trial by jury. . . . If we were to grant further relief on appeal [by reversing the assault conviction], the presumptive remedy would be to remand for a new trial [on the simple

(continued . . .)

demandable offense, that Maziarz did not waive his right to a jury trial, and that it was error under those circumstances to proceed with a bench trial. *See Jackson v. United States*, 498 A.2d 185, 189-90 (D.C. 1985). However, the error does not affect the lesser-included offense of attempted PPW. Accordingly, this Court should remand this case to the Superior Court with instructions to vacate Maziarz's PPW(b) conviction and to enter judgment against Maziarz on the lesser-included offense of attempted PPW(b).

A. Background

On August 9, 2021, Maziarz was charged with, *inter alia*, PPW(b), which is a jury-demandable offense (R. 1). *See* D.C. Code §§ 22-4514(b), (c), -4515. However, Maziarz did not waive his right to a jury trial (see, e.g., 11/15/22 Tr. 7).

assault charge], and [because simple assault alone is not jury demandable] that would be a non-jury trial. It seems pointless to remand for a bench trial when that is the form of adjudication appellant has already received.”).

B. Discussion

We agree that Maziarz had a right to a jury trial which he did not waive.⁶ Thus, his PPW(b) conviction should be reversed. *See Jackson*, 498 A.2d at 189-90 (reversing conviction after a bench trial for lack of an express waiver of a jury trial). Rather than conducting a jury trial on that count on remand, the appropriate remedy would be for the trial court to enter judgment for attempted PPW(b), which is not jury-demandable. *See Diggs v. United States*, 966 A.2d 857, 861-62 (D.C. 2009) (when a defendant is convicted in a bench trial for a jury-demandable offense where there is a non-jury demandable lesser-included offense, the appropriate remedy is to vacate the conviction and remand the matter to the trial court for either a retrial of the offense of conviction before a jury

⁶ Maziarz argues (at 32-33) that his failure to object to the bench trial is subject to plain error review. *Compare Fortune v. United States*, 59 A.3d 949, 954 (D.C. 2013) (noting that this Court has “not resolved whether a defendant must satisfy the strictures of plain error review where a trial court fails to fulfill its duty to elicit a waiver of his Sixth Amendment right to a jury trial.”), *with Miller v. United States*, 209 A.3d 75, 78 (D.C. 2019) (applying plain error review to defendant’s failure to request a jury trial in a jury-demandable offense, citing *Fortune* without discussion). This Court need not resolve the question here, as the government agrees that reversal of the PPW(b) conviction is warranted under any standard of review.

or, if the government opts against retrying the defendant on the offense of conviction, an entry of judgment on the lesser-included offense). In *Diggs*, as here, the defendant was convicted of simple assault and PPW(b) after a bench trial. *Id.* at 858-59. This Court ruled that Diggs was entitled to a jury trial on the charge of PPW(b), and his conviction on that charge should be reversed. *Id.* at 861. However, finding that “the charge of attempt to possess a prohibited weapon is subsumed within the proof of the completed offense,” the Court ruled that, if the government opted against retrying the defendant for the greater offense before a jury, the trial court on remand should vacate the conviction and enter a judgment of conviction on the attempt charge. *Id.* at 861-62.

Here, the government will opt against retrying Maziarz before a jury on the greater offense of PPW(b). *See, e.g., Gathy v. United States*, 754 A.2d 912, 920 (D.C. 2000) (allowing the government to elect whether to retry appellant on the greater charge to which error applied, or to have the court enter judgment on a lesser included offense, which was unaffected by the error); *Bowler v. United States*, 480 A.2d 678, 687-88 (D.C. 1984) (same). Accordingly, this Court should “reverse the judgment of the trial court and remand with instructions to vacate [Maziarz’s]

conviction for possession of a prohibited weapon and to enter judgment against [Maziarz] on the lesser-included offense of attempted possession of a prohibited weapon.” *See Diggs*, 966 A.2d at 862. *See also Rutledge v. United States*, 517 U.S. 292, 306, (1996) (adopting principle of federal appellate courts that have “uniformly concluded that they may direct the entry of judgment for a lesser included offense when a conviction for a greater offense is reversed on grounds that affect only the greater offense”).

CONCLUSION

WHEREFORE, the government respectfully submits that this Court should affirm Maziarz's conviction for simple assault, reverse his PPW(b) conviction, and remand with instructions to enter a conviction on the lesser-included offense of attempted PPW(b).

Respectfully submitted,

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**District of Columbia
Court of Appeals**

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Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a “CF” (criminal felony), “CM” (criminal misdemeanor), “CT” (criminal traffic), and “CO” (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.

If you are incarcerated, are not represented by an attorney (also called being “pro se”), and not able to redact your brief, please initial the box below at “G” to certify you are unable to file a redacted brief. Once Box “G” is checked, you do not need to file a separate motion to request leave to file an unredacted brief.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, amended May 2, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

- (1) An individual’s social-security number
- (2) Taxpayer-identification number
- (3) Driver’s license or non-driver’s license
identification card number

- (4) Birth date
- (5) The name of an individual known to be a minor as defined under D.C. Code § 16-2301(3)
- (6) Financial account numbers
- (7) The party or nonparty making the filing shall include the following:
 - (a) the acronym “SS#” where the individual’s social-security number would have been included;
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 - (d) the year of the individual’s birth;
 - (e) the minor’s initials;
 - (f) the last four digits of the financial-account number; and (g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.

D. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

F. Any other information required by law to be kept confidential or protected from public disclosure.

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22-CM-898
Case Number(s)

Steven B. Snyder_____
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October 24, 2023
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing Brief for Appellee to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Jason K. Clark, jason@clarkdefense.com, on this 24th day of October, 2023.

/s/

STEVEN B. SNYDER
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