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NO. COA01-1061

NORTH CAROLINA COURT OF APPEALS

Filed: 2 July 2002

STATE OF NORTH CAROLINA

v.

Catawba County
No. 96 CRS 010339

WILLIAM POWELL CROOKS

Appeal by defendant from judgments dated 22 February 2001 by Judge L. Oliver Noble, Jr. in Catawba County Superior Court. Heard in the Court of Appeals 11 June 2002.

Attorney General Roy Cooper, by Assistant Attorney General Tina A. Krasner, for the State.

M. Victoria Jayne for defendant appellant.

GREENE, Judge.

William Powell Crooks (Defendant) appeals judgments dated 22 February 2001 entered consistent with a jury verdict finding him guilty of first-degree kidnapping and assault with a deadly weapon with intent to kill inflicting serious injury.

On 8 July 1996, Defendant was indicted for the first-degree kidnapping of and assault with a deadly weapon with intent to kill inflicting serious injury on Jamie Lynn Stamey (Stamey) based on acts committed on 12 June 1996. Prior to trial, Defendant challenged Stamey's capacity to testify, and the trial court conducted a *voir dire* hearing to determine Stamey's competency to

testify.

Stamey's *voir dire* testimony established that she had lived on the streets since she was thirteen years old, at which time she started using crack cocaine. Prior to leaving home, Stamey had attended special educational classes at school. When Stamey was fourteen years old, she was first hospitalized for a psychiatric condition. She was hospitalized on several occasions thereafter, the last time being approximately two months prior to June 1996. Stamey stated she knew what it meant to promise to tell the truth. She further testified she remembered the events surrounding 11 and 12 June 1996. She did, however, admit having used sixteen rocks of crack cocaine on 11 June 1996, with six of those used just one hour prior to meeting Defendant, and having gone without sleep for seven days prior to the night of 11 June 1996.

Dr. Khaja Ahsanuddin (Dr. Ahsanuddin) testified as an expert in psychiatry. Dr. Ahsanuddin had treated Stamey in the past and had diagnosed her with oppositional defiant disorder. Dr. Ahsanuddin had never observed Stamey to be disoriented or confused, and he believed she could differentiate between the truth and a lie. Dr. Ahsanuddin doubted Stamey had actually gone without sleep for seven days prior to 11 June 1996 as he had experience with patients telling him they were sleep deprived when nurses reported they had slept soundly. Furthermore, he would find it "very suspect" if "after a traumatic event . . . a person would remember how many rocks [of crack cocaine she had] taken." Dr. Ahsanuddin's last contact with Stamey was in December 1994.

Dr. John Latz (Dr. Latz), who had reviewed Stamey's medical history but had not examined her personally, did not believe Stamey would be competent as a witness. While in his opinion Stamey was capable of understanding the duty of a witness to tell the truth, Dr. Latz was concerned that

her underlying personality disorder and limited intellectual functioning might cause her to . . . range anywhere from less truthful by omission and inadequate or incorrect recall to outright volitional misinformation. And certainly clouding of her condition from the concurrent substance abuse would make anything she would likely recall during a time when she was under the influence unreliable.

At the conclusion of the *voir dire* hearing, the trial court made the following findings:

Upon the *voir dire* hearing to determine the competency of the witness, the [trial] [c]ourt finds that [Stamey] is now twenty-three years old and that she was approximately nineteen years old at the time of the crime alleged She quit school in the eighth grade, but she can read. At that time[,] she was thirteen and living with her mother. She left home and started living on the streets and using crack cocaine.

Early in her life[,] she had meningitis and she was packed in ice. Currently she is in prison. She still has seizures and has had seizures since she was six or seven years old. In school[,] she was in Special Ed[ucational] classes.

She had stayed up for seven days straight before June 11, 1996 She had smoked 16 rocks of crack cocaine in the twenty-four hours before this crime occurred. She had smoked a rock of crack cocaine at 11 p.m. and a total of six rocks on that evening. She lied to Officer Pitts about some of the details of the crime after surgery because she was mad. She has contradicted herself in various statements to the officers about the details of the crime[.]

She was first hospitalized at Broughton

Hospital when she was fourteen and has been there a total of six times. She has been in other mental hospitals and in group homes and the Juvenile Evaluation Center and the Department of Corrections.

Dr. Ahsanuddin is a psychiatrist employed at Broughton. He says that he never saw [Stamey] disoriented or confused. It is his opinion that she can differentiate between the truth and a lie and that she can understand an oath and that oppositional defiant disorder is her major diagnosis. He has not seen her since 1994. His opinion is that she has an impulsive disorder and seizures. He believed she is capable of telling the truth. . . . [H]e doubts that she had been awake for seven days. He doubts that she had used 16 rocks of crack cocaine. . . . [A]nd so, therefore, he did not answer the question about whether her testimony would be reliable.

Dr. Latz was appointed by the [trial] [c]ourt to examine . . . Stamey. He has not examined her personally but has reviewed a box full of various reports concerning her mental condition and has determined that in his opinion she may be capable -- she is capable of understanding the duty to tell the truth, but her condition may cause her to range from less truthful to outright untruthful or misleading information. And in his opinion[,] if she [was] telling the truth about the amount of crack cocaine she [had] smoked and the amount of time she [had] stayed awake, he believes that she would not be a reliable witness at all in the case or a competent witness. He believes that her psychiatric condition would adversely affect her competency as a witness and that her substance abuse, given her limited intellectual functioning, strong underlying personality disorder, and admitted poly-substance abuse makes it unlikely that she would make a reliable witness.

Based upon the foregoing findings of fact, the [trial] [c]ourt concludes as [a matter of] law that [Stamey] is competent to testify . . . but that [her] testimony must be tempered by and explained by Dr. Latz, if it is to be admitted, so that the jury has some concept of [the] possibility that her testimony is completely unreliable and so that they can believe so much of it as they choose

to attach meaning to.

After the conclusion of the *voir dire* hearing, Dr. Latz was called as the first witness. He explained his belief that Stamey's "testimonial capacity would be limited given her mental retardation, the extensive substance abuse . . . [, and] also because of an underlying personality disorder." While in his opinion Stamey was able to distinguish between right and wrong, she might "be unable to be truthful . . . given her personality disorder." Furthermore, Dr. Latz cautioned that Stamey's "sleep deprivation of seven days or one rock of crack cocaine, much less 16, would seriously impair her ability to truthfully recall the events surrounding [11 June 1996]."

Stamey testified she had smoked approximately sixteen rocks of crack cocaine on 11 June 1996, with the last rock used about an hour prior to meeting Defendant. Around midnight on 11 June 1996, Defendant had solicited Stamey, who worked as a prostitute, for sex. Stamey testified she got into a cab with Defendant and drove to his house. When they arrived at Defendant's house, Stamey followed Defendant to a shed behind the house. Inside the shed, they proceeded to take off their clothes. When Stamey noticed Defendant was wearing a colostomy bag, she told him she would not have sexual intercourse with him. Stamey got dressed, but Defendant, who became angry, hit her in the mouth with his fist. Stamey fled from the shed and began running down the road. Defendant, who had followed her, caught up with Stamey and took her into the woods where he cut her face, throat, breast, and stomach

with a pocketknife. Defendant left when Stamey pretended to be dead. Thereafter, Stamey waited for a while and then proceeded to her aunt's house, which was nearby. Upon arriving there, Stamey was taken to the hospital. Stamey testified that when the police subsequently presented her with a photo lineup consisting of six pictures, Stamey identified Defendant's picture as her assailant. Defendant did not object to this evidence. Stamey also identified Defendant in court.

Defendant did not testify but presented witnesses who testified to his reputation in the community. During the sentencing phase, Defendant requested the trial court to find three mitigating factors, two of which the trial court refused to find. As to the third requested factor, the trial court stated that it would find this factor but "[did] not find that th[is] mitigating factor outweigh[ed] anything." The trial court then sentenced Defendant in the presumptive range.

The issues are whether: (I) the trial court abused its discretion in finding Stamey competent to testify; and (II) the trial court erred in failing to sentence Defendant in the mitigated range.

I

Defendant contends the trial court abused its discretion when it found Stamey competent to testify. We disagree.

Rule 601 of the North Carolina Rules of Evidence states: "Every person is competent to be a witness except . . . when the

[trial] court determines that he is . . . incapable of understanding the duty of a witness to tell the truth." N.C.G.S. § 8C-1, Rule 601(a)-(b) (2001). The competency of a witness rests within the sound discretion of the trial court based upon its overall impression and observation of the witness. *State v. Andrews*, 131 N.C. App. 370, 373-74, 507 S.E.2d 305, 307-08 (1998), *disc. review denied*, 350 N.C. 100, 533 S.E.2d 471 (1999); *State v. Hicks*, 319 N.C. 84, 89, 352 S.E.2d 424, 426 (1987). "Absent a showing that the ruling as to competency could not have been the result of a reasoned decision, the ruling must stand on appeal." *Hicks*, 319 N.C. at 89, 352 S.E.2d at 426. Moreover, "[a] witness is not incompetent to testify on the basis of drug use alone, but only insofar as such use affects his ability to be understood or to respect the importance of veracity." *State v. Fields*, 315 N.C. 191, 203-04, 337 S.E.2d 518, 526 (1985). "[W]here the effect of drug use is concerned[,] . . . the question is more properly one of the witness's credibility, not his competence. As such, it is in the jury's province to weigh [t]his evidence, not in the court's to bar it." *Id.* at 204, 337 S.E.2d at 526.

In this case, the evidence revealed drug use on the part of Stamey as well as a history of psychiatric problems. Although Dr. Latz expressed concern about Stamey's competence to testify based on these factors, both he and Dr. Ahsanuddin were of the opinion that Stamey was capable of understanding the duty of a witness to tell the truth. As this evidence, reflected in the trial court's findings, supports its conclusion to let Stamey testify, the trial

court's conclusion was the result of a reasoned decision as required by *Hicks*. Furthermore, by ordering Dr. Latz to testify in front of the jury regarding his opinion as to Stamey's competence, the trial court ensured that the jury would have the tools to properly weigh Stamey's credibility. As such, there was no abuse of discretion.

II

Defendant next argues the trial court erred in failing to find mitigating factors in accordance with Defendant's evidence. We disagree.

According to N.C. Gen. Stat. § 15A-1340.16(a), "the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists." N.C.G.S. § 15A-1340.16(a) (2001). The decision to depart from the presumptive range, however, is in the discretion of the trial court, *id.*, and no findings of mitigating or aggravating factors are required where the trial court chooses to sentence the defendant in the presumptive range, *State v. Brooks*, 136 N.C. App. 124, 133, 523 S.E.2d 704, 710 (1999), *disc. review denied*, 351 N.C. 475, 543 S.E.2d 496 (2000). Accordingly, this assignment of error is overruled.¹

No error.

Judges TIMMONS-GOODSON and HUNTER concur.

¹Defendant further contends the trial court erred in admitting evidence of the photo lineup. Defendant, however, failed to object to the admission of this evidence, see N.C.R. App. P. 10(b)(1), and did not assert plain error in his assignment of error, see N.C.R. App. P. 10(c)(4). Accordingly, we do not address this issue.

Report per Rule 30(e).