In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00192-CR

GREG GARCIA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 411th District Court
Polk County, Texas
Trial Cause No. 18,145

MEMORANDUM OPINION

Appellant, Greg Garcia, appeals his conviction for manslaughter. In one issue, Garcia contends that the trial court abused its discretion by failing to determine that Garcia was incompetent to stand trial. We affirm the trial court's judgment.

BACKGROUND

On February 17, 2005, the grand jury indicted Greg Garcia for the murder of his cellmate, Washington, or alternatively for manslaughter or aggravated assault of

Washington. Thereafter, the court declared Garcia incompetent to stand trial on three separate occasions. After receiving treatment at various facilities, Garcia was scheduled to go to trial on March 9, 2009. Before the commencement of voir dire, Garcia's trial counsel informed the trial court that his conversation with Garcia the night before caused him to question Garcia's competence to stand trial. He explained that he had a very difficult time communicating with Garcia, and had doubts that he could communicate with Garcia during trial. Garcia's counsel indicated that Garcia was only willing to discuss "firing him" as his counsel.

The trial court then conducted an informal hearing, wherein Garcia's trial counsel called his co-counsel to testify regarding Garcia's competency. She testified that she observed Garcia with lead defense counsel the morning of trial and that he was nonresponsive and "did not answer lucidly to the questions that were asked[,]" responding "either entirely off topic or he simply did not respond." She further testified he was agitated and either unwilling or unable to sit still and did not appear to know what was happening. On cross-examination by Garcia's counsel, Garcia testified that he understood what he was on trial for, that he understood the role of the judge, the court reporter, the defense attorney and the prosecutor. The trial court confirmed that Garcia had taken his medications.

Thereafter, the trial court decided to proceed with voir dire, but informed Garcia's trial counsel that if he still wanted a physician to examine Garcia for a determination of

competency, then the trial court would order it and if the physician determined Garcia was incompetent, the trial court would then declare a mistrial.

After commencing with voir dire, during the first break, Garcia's counsel once again asked the trial court to have Garcia examined for competency, explaining various bizarre behaviors including: sticking his hands down his pants in front of the venire panel; putting his arm around the prosecutor and telling him what a "good job he is doing"; and giving his own counsel "big bear hugs." The trial court ordered voir dire to continue and at its conclusion, the case proceeded to trial. At the end of day one of trial, Garcia's trial counsel re-urged the competency issue based on Garcia's earlier bizarre behavior and because he slept through most of the trial that afternoon. Garcia's counsel indicated concern that he would be unable to communicate with Garcia during trial if he could not stay awake due to his medications.

Before resuming trial on the second day, the trial court questioned Dr. Roger Saunders regarding his examination of Garcia. Dr. Saunders testified via telephone that he had examined Garcia the night before at the jail. He testified that he believed Garcia's medications were necessary to maintain his competency. He acknowledged that Garcia exhibited bizarre behavior but believed some of this behavior was residual symptoms of his illness, schizophrenia. He explained that "[m]edications, even if they are taken as prescribed, are not going to eliminate some of this bizarre presentation." He described Garcia's sitting through the trial as a "fluid situation." He concluded that Garcia "is now

competent to stand trial[,]" but warned that "the potential for change in that status does remain high." He further expressed concern that the jail personnel should make sure that Garcia was actually taking his medication and not just "cheeking" the pills. On cross-examination, Dr. Saunders stressed the importance of Garcia's medication indicating that if he does not take his medication it would affect his competency. He explained:

> [Garcia] is capable of mental decompensation on a very, very quick basis. Certainly not taking medication on any given day is going to cause some change, just like any other medication. He may be drowsy at different times. He may be irritable. So it is very important that he take that and that it very much would or could affect his competency if he does not take that.

However, when questioned specifically about Garcia's failure to take his medication on the first day of trial and whether that affected his competency, Dr. Saunders testified that it was "insufficient to render him incompetent."

The trial court confirmed with the sheriff's deputy that Garcia had taken his medication on the morning of the second day of trial. Later the same day, the prosecutor noted for the record that during the lunch break, "Mr. Garcia has been in the room visiting with the reporter and the bailiff and some other people having a very lucid conversation about sports and about hometowns and different things. It seemed like a very normal, lucid conversation." After the defense rested, the State proceeded to call rebuttal witnesses. Following the examination of one of the State's rebuttal witnesses, the defense asked for a break indicating that Garcia was threatening to engage his counsel in a loud discussion in front of the jury. Defense counsel once again asked the trial court

to reconsider Garcia's competency indicating that Garcia had chosen to testify against his counsel's advice and that his counsel was uncertain of the accuracy of the testimony Garcia would provide. The court denied the motion based on Dr. Saunders' findings of competency and the trial court's own observations of competency.

Thereafter, Garcia's counsel reopened his case to call Garcia to testify. During his examination, Garcia was responsive and appeared to understand the questions posed to him by both his attorney and the prosecutor. He responded in a lucid manner. Garcia frequently addressed his trial counsel throughout the prosecutor's cross-examination of him, attempting to confirm that the prosecutor's questions were improper. The State then called another rebuttal witness, Garvis Goodwin, who testified that he examined Garcia after the incident with Washington. Throughout Goodwin's testimony, Garcia interjected commentary regarding Goodwin's truthfulness, as well as the objectionable nature of questions posed by the State.

Thereafter, trial counsel once again re-urged the court to consider having Garcia re-evaluated for competency, arguing that Garcia's behavior had become more erratic as the afternoon progressed. The trial court denied this request and proceeded with the trial. The State then called Willie Paldo as a rebuttal witness. Garcia also interjected comments regarding Paldo's truthfulness during his testimony.

On March 11, 2009, the trial judge read the charge to the jury. Garcia made numerous statements during the reading of the charge, including a number of statements

using obscenities directed at the trial judge. Eventually, Garcia's trial counsel asked for a recess to excuse Garcia from the courtroom for the remainder of the guilt or innocence phase of trial. The trial court inquired about Garcia's medications and confirmed that while Garcia did not take his prescribed medications, he had received an injection of Diazepam, or Valium. Defense counsel expressed his concern that Garcia had not received his prescribed medication, which Dr. Saunders testified was necessary for Garcia to maintain his competency. In response, the prosecutor confirmed with the deputy sheriff that Garcia refused to take his medication several times before they administered the injection. A deputy sheriff removed Garcia from the courtroom for the remainder of the trial. The jury found Garcia guilty of manslaughter. The trial court assessed punishment at fifty years of confinement.

On appeal, Garcia now urges us to find the trial court abused its discretion by failing to have him reexamined by an expert during or after the second day of trial, and by failing to determine that he was incompetent to stand trial.

APPLICABLE LAW AND ANALYSIS

"The conviction of an accused person while he is legally incompetent violates due process." *McDaniel v. State*, 98 S.W.3d 704, 709 (Tex. Crim. App. 2003). A defendant is incompetent to stand trial if he does not have: (1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, or (2) a rational as well as factual understanding of the proceedings against him. Tex. Code Crim. Pro. Ann. art.

46B.003(a). The defendant is presumed competent and bears the burden to prove his incompetence by a preponderance of the evidence. *Id.* art. 46B.003(b).

Either party, or the trial court, sua sponte, may suggest the defendant is not competent to stand trial. *Id.* art. 46B.004(a), (b). If such a suggestion is made, the trial court shall conduct an "informal inquiry whether there is some evidence from any source that would support a finding that the defendant may be incompetent to stand trial." *Id.* art. 46B.004(c). "If the issue of the defendant's incompetency to stand trial is raised after the trial on the merits begins, the court may determine the issue at any time before the sentence is pronounced." *Id.* art. 46B.005(d). The trial court must conduct this informal inquiry into a defendant's competency when there is evidence "sufficient to raise a *bona fide* doubt in the mind of the judge whether the defendant is legally competent." *Montoya v. State*, 291 S.W.3d 420, 424 (Tex. Crim. App. 2009). "A *bona fide* doubt may exist if the defendant exhibits truly bizarre behavior or has a recent history of severe mental illness or at least moderate mental retardation." *Id*. at 425. "A bona fide doubt is 'a real doubt in the judge's mind as to the defendant's competency.'" *Fuller v. State*, 253 S.W.3d 220, 228 (Tex. Crim. App. 2008), *cert. denied*, 129 S.Ct. 904, 173 L.Ed.2d 120 (2009) (quoting *Alcott v. State*, 51 S.W.3d 596, 599, n.10 (Tex. Crim. App. 2001)).

After the informal inquiry, if the trial court finds evidence to support a finding of incompetency, the trial court shall order an examination of the defendant as to the defendant's competency to stand trial. *See* Tex. Code Crim. Proc. Ann. art. 46B.005(a)

(West 2006). To justify a second competency hearing, defense counsel must offer new evidence of a change in defendant's mental condition since the first competency hearing and evaluation. *See Learning v. State*, 227 S.W.3d 245, 250 (Tex. App.—San Antonio 2007, no pet.); *Clark v. State*, 47 S.W.3d 211, 218 (Tex. App.—Beaumont 2001, no pet.).

We review a trial court's decision not to conduct a competency inquiry under an abuse of discretion standard. *Moore v. State*, 999 S.W.2d 385, 393 (Tex. Crim. App. 1999). A trial court abuses its discretion if its decision is arbitrary or unreasonable. *Montoya*, 291 S.W.3d at 426.

Garcia contends that his "recent severe mental illness" and "truly bizarre acts" were clearly present throughout the trial. Appellant further contends that his "condition worsened during the trial after his examination by Dr. Saunders, particularly after he was not given his prescribed antipsychotic medicine." Garcia argues that because of this worsened condition, the trial court abused its discretion when it failed to order an additional examination.

Prior to the beginning of voir dire, Garcia's trial counsel presented to the trial court a suggestion that Garcia was not competent to stand trial. As a result, the trial court conducted an informal hearing and ordered Dr. Saunders to examine Garcia. Dr. Saunders examined Garcia and testified that he was competent to stand trial. The parties proceeded to try the case. Numerous times throughout the trial, Garcia's counsel suggested to the trial court that Garcia was incompetent to stand trial and needed to be re-

evaluated; however, the very examples he references to indicate incompetency serve as an indication that Garcia was able to consult with his attorney with a reasonable degree of rational understanding, and further indicates that Garcia understood the proceedings against him.

Garcia questioned the trial court numerous times regarding his attorney's representation of him. While Garcia may have refused to cooperate with his attorney, he had the ability to do so. Garcia's theory at trial—that he was just "boxing" with Washington, while different from his counsel's theory that he was defending himself—shows that Garcia had a plan of action to discredit any insinuation that he intentionally killed Washington. Garcia consciously pursued his own strategy. Garcia's testimony was lucid and showed he was cognizant of and understood the charges against him. *Kostura v. State*, 292 S.W.3d 744, 747-48 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (determining that history of mental illness and bizarre behavior was insufficient to raise a bona fide doubt requiring a competency inquiry in light of appellant's lucid testimony); *Ryan v. State*, 937 S.W.2d 93, 106 (Tex. App.—Beaumont 1996, pet. ref'd) (concluding that appellant's testimony is a "good barometer" of competency); *McDaniel*, 98 S.W.3d at 712 (finding relevant that appellant's testimony in his own behalf was articulate, logical, and reflected his understanding of the charges against him, noting that such clear and lucid testimony on the part of a defendant has often been viewed as important in determining if he is competent to stand trial).

Moreover, Garcia's commentary during the State's examination of its rebuttal witnesses indicates that Garcia followed along with the trial and understood the proceedings and the testimony. While his behavior might have been irreverent and erratic at times, this is insufficient evidence to show he was incompetent to stand trial. The trial court personally observed Garcia and his behavior throughout the trial. The trial court's determination that Garcia's behavior did not warrant a second competency evaluation was not arbitrary or unreasonable.

Accordingly, we hold that the trial court did not abuse its discretion by failing to have Garcia's competency evaluated a second time. We overrule Garcia's sole issue and affirm the trial court's judgment.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on October 25, 2010
Opinion Delivered November 3, 2010
Do not publish

Before McKeithen C.J., Gaultney, and Kreger J.J.