COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-09-053-CR

BILLY H. WASH — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 396TH DISTRICT COURT OF TARRANT COUNTY

MEMORANDUM OPINION[1]

I. INTRODUCTION

Appellant Billy H. Wash appeals his conviction for assault causing bodily injury to a family or household member with an enhancement based on a prior conviction for assault with bodily injury to a family or household member. In two issues, Wash argues that the trial court erred by not sua sponte conducting

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[1] *See* Tex. R. App. P. 47.4.

a competency hearing and that the evidence is legally insufficient to convict him of the alleged offense. We will affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

Adriane Walsh is Wash's daughter. Wash owns Adriane's car. On February 16, 2008, Wash arrived unannounced at Adriane's home to take the car to have the transmission serviced. Wash was angry because he had attempted to contact Adriane about having the car serviced a number of times but was unsuccessful. When Adriane told Wash that he could not take the car because she had to take her daughter somewhere, Wash entered the house and punched Adriane under her left eye. Wash then pushed Adriane to the floor, punched her over her right eye, pulled her by her hair around the corner of the entryway, and kicked her seven to nine times on her head and side, repeatedly asking where the keys to the car were. Wash retrieved the keys, told Adriane that she would never see the car again, and left the house. Adriane deadbolted the door, called 911, and heard Wash banging on the door after she noticed that the car alarm went off.

Wash pleaded not guilty to each of the three paragraphs alleged in the indictment and not true to the enhancement paragraph.[2] Trial was to the

[2] The indictment alleged that Wash assaulted Adriane by striking her with his hand, pushing her down with his hand, and kicking her with his foot.

bench. The trial court found Wash guilty of all three paragraphs, sentenced him to four years' confinement, suspended the sentence, and placed him on community supervision for two years.

III. COMPETENCY

In his first issue, Wash argues that the trial court erred by not sua sponte inquiring into his competency either during the trial on the merits or prior to punishment. He contends that the trial court should have conducted an inquiry into his competency because he "had a severe brain injury for which he was still receiving disability," he "was previously diagnosed as bipolar and not currently on psychotropic medication," and "many of [his] answers [during his testimony] were bizarre and confusing."

A trial court cannot accept a plea of guilty "unless it appears that the defendant is mentally competent and the plea is free and voluntary." Tex. Code Crim. Proc. Ann. art. 26.13(b) (Vernon 2009). "A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence." *Id*. art. 46B.003(b) (Vernon 2006). A defendant is incompetent to stand trial if he does not have "sufficient present ability to consult with [his] lawyer with a reasonable degree of rational understanding" or "a rational as well as factual understanding of the proceedings against" him. *Id*. art. 46B.003(a). If evidence suggesting that the

defendant may be incompetent to stand trial comes to the attention of the trial court, the court, on its own motion, shall suggest that the defendant may be incompetent to stand trial. *Id*. art. 46B.004(b). On the suggestion that the defendant may be incompetent to stand trial, the trial court shall determine by 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).

An informal inquiry is not required, however, unless the evidence is sufficient to create a bona fide doubt in the mind of the trial court about the defendant's competency. *McDaniel v. State*, 98 S.W.3d 704, 710 (Tex. Crim. App. 2003); *see Fuller v. State*, 253 S.W.3d 220, 228 (Tex. Crim. App. 2008), *cert. denied*, 129 S. Ct. 904 (2009); *see also Montoya v. State*, No. PD-0239-08, 2009 WL 1873354, at *4 (Tex. Crim. App. July 1, 2009). A bona fide doubt is a real doubt in the judge's mind as to the defendant's competency. *Fuller*, 253 S.W.3d at 228. Evidence is sufficient to create a bona fide doubt if it shows "recent severe mental illness, at least moderate retardation, or truly bizarre acts by the defendant." *Id*. We review a trial court's implied decision not to hold an informal competency inquiry for an abuse of discretion. *Moore v. State*, 999 S.W.2d 385, 393 (Tex. Crim. App. 1999), *cert. denied*, 530 U.S.

1216 (2000); *Gray v. State*, 257 S.W.3d 825, 827 (Tex. App.—Texarkana 2008, pet. ref'd).

Here, Wash confirmed for the trial court that he and his attorney had discussed the charges against him and the issue of whether to have a jury trial. Wash's attorney questioned him about the State's plea bargain offer, and Wash agreed that he had rejected the offer after his attorney conveyed it to him. Wash testified and gave detailed, responsive answers to his attorney's questions on direct and redirect, and his attorney opined that he was mentally competent. The trial court could have reasonably concluded that Wash had sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.

As for Wash's understanding of the proceedings, he confirmed for the trial court his understanding of the charges against him, his right to have a jury trial, the State's plea bargain offer, and his right not to testify. Wash testified that he had suffered a severe brain injury in 1989 as a result of a car wreck that he was involved in. But according to Wash, the only impairment that "lingers" from the car wreck is his condition of "diminished intermediate term recall." Wash testified, "That's it." Further, although Adriane testified that she thought Wash was "mentally ill," she acknowledged that her opinion was based on information she had received secondhand. Indeed, Wash flatly denied ever

having been diagnosed as having any sort of "mental health issues"; he took some medication in the 1980s, but he agreed that no professional medical provider had ever told him that he is bipolar; and he testified that he had not taken any medication since the 1989 car wreck. Wash characterizes a number of religious references and statements that he made during his testimony as bizarre and confusing, but he also demonstrated through his testimony an understanding of the proceedings, testifying in detail about his relationship with Adriane, his ownership of Adriane's car, and his version of the events that occurred on February 16, 2008.[3] Viewing the record in context, the trial court could have reasonably concluded that Wash had a rational and factual understanding of the proceedings.

None of the testimony that Wash directs us to demonstrates that he suffers or has suffered from recent severe mental illness, that he is at least

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[3] Wash testified about the assault in part as follows:

> I was only focused on getting the keys. That's all I was trying to do was get the keys. And when she turned to get on the right-hand side like this and she exposed her buttock, that's when I hit her two or three times. They were good sharp slaps. Could it have left a bruise? Absolutely could have. Because they were sharp slaps, open-handed slaps against her left buttock, yes, and it could have bruised her, I won't deny that. But there wasn't any malice or for[e]thought or doubled-up fists or none of that mess. That never happened.

moderately retarded, or that he has engaged in any truly bizarre acts. *See Fuller*, 253 S.W.3d at 228. Having considered the entire record, the evidence did not raise a bona fide doubt as to whether Wash had (1) a 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. *See McDaniel*, 98 S.W.3d at 709–10. Accordingly, we hold that the trial court did not abuse its discretion by failing to sua sponte conduct an informal inquiry into Wash's competency. *See* Tex. Code Crim. Proc. Ann. art. 46B.004(b), (c). We overrule Wash's first issue.

IV. EVIDENTIARY SUFFICIENCY

In his second issue, Wash argues that the evidence is legally insufficient to support his conviction because he had neither the mental capacity nor the capability of forming the requisite mental state required to commit the offense of assault–family member.

In reviewing the legal sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the prosecution in order to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). A person commits

assault–family member if the person intentionally, knowingly, or recklessly causes bodily injury to a family or household member. Tex. Penal Code Ann. § 22.01(b)(2) (Vernon Supp. 2008). Proof of knowledge or intent is an inference that may be drawn by the factfinder both from direct evidence and from evidence of the circumstances surrounding the act. *See Brown v. State*, 122 S.W.3d 794, 800 (Tex. Crim. App. 2003), *cert. denied*, 541 U.S. 938 (2004); *Wolfe v. State*, 917 S.W.2d 270, 275 (Tex. Crim. App. 1996). Therefore, a factfinder can infer knowledge or intent from the acts, conduct, and remarks of the accused and from the surrounding circumstances. *Gant v. State*, 278 S.W.3d 836, 839 (Tex. App.—Houston [14th Dist.] 2009, no pet.). "Texas law, like that of all American jurisdictions, presumes that a criminal defendant is sane and that he intends the natural consequences of his acts." *Ruffin v. State*, 270 S.W.3d 586, 591–92 (Tex. Crim. App. 2008).

Here, Adriane testified that when she told Wash that he could not take the car to be serviced, he punched her under her left eye, pushed her to the floor, punched her over her right eye, and kicked her. Wash repeatedly asked Adriane where her keys to the car were. Wash testified that he administered two or three "short slaps" against Adriane's buttocks in order to "reassert[]" himself. He described his actions as "administering corporal discipline to a wayward child." The factfinder could have reasonably inferred from Wash's

acts, conduct, and remarks and from the surrounding circumstances that he possessed the requisite culpable mental state to support a conviction for assault–family member. Viewing the evidence in the light most favorable to the verdict, a rational trier of fact could have found beyond a reasonable doubt that Wash committed the offense of assault–family member. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Clayton*, 235 S.W.3d at 778. Accordingly, we hold that the evidence is legally sufficient to support Wash's conviction. We overrule Wash's second issue.

V. CONCLUSION

Having overruled Wash's two issues, we affirm the trial court's judgment.

PER CURIAM

PANEL: MEIER, J.; CAYCE, C.J.; and MCCOY, J.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: August 24, 2009