Third District Court of Appeal

State of Florida

Opinion filed June 17, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1081
Lower Tribunal No. 11-7718

Antwan Barber,
Appellant,

vs.

The State of Florida,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Richard L. Hersch, Judge.

Carlos J. Martinez, Public Defender, and Manuel Alvarez, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Brian H. Zack, Assistant Attorney General, for appellee.

Before SCALES, MILLER, and LOBREE, JJ.

MILLER, J.

Appellant, Antwan Barber, challenges his judgment and sentence for second-degree murder, in violation of section 782.04(2), Florida Statutes. On appeal, Barber assigns error in the denial of a motion to disqualify the lower tribunal. For the reasons articulated below, we find the motion filed below was legally insufficient.

At the age of fifteen, Barber was charged with shooting and killing his neighbor. The State filed a juvenile direct file information, charging him with one count of second-degree murder. See § 985.557(1)(a)(8), Fla. Stat. (2019). Shortly thereafter, he was diagnosed with a significant mental illness and deemed incompetent to stand trial.

Barber was committed to a forensic facility, and, after having been availed of treatment, was adjudicated competent. Between February and March of 2019, he was subjected to competency evaluations by three different psychologists, resulting in conflicting determinations. Hence, the trial court convened a competency hearing.

Midway through the presentation of evidence, the defense, ore tenus, sought to disqualify the presiding judge. The motion came upon the heels of the court's announcement it intended to summon a venire to the courtroom at a time certain, if necessary, for the commencement of voir dire.

In furtherance of disqualification, the defense asserted that, prior to the commencement of the proceedings, the judge encountered a witness waiting outside of chambers and inquired as to whether she was the second-chair attorney assigned

to try the case. The defense contended this question, coupled with the of-record comment regarding assembling the jurors, signified trial was imminent. Thus, it reasoned, the judge had prematurely formed an ultimate opinion regarding Barber's competence.

As a threshold matter, the record does not reflect the motion was ever reduced to writing.[1] More significantly, the purportedly offending remarks, as encapsulated within the record, were by their very terms conditional, thus, evinced neither preconceived notion nor bias. See Wall v. State, 238 So. 3d 127, 143 (Fla. 2018) ("'[A] movant cannot simply pluck one word from a full sentence made by the trial judge' to make a motion to disqualify legally sufficient.") (citation omitted); Gregory v. State, 118 So. 3d 770, 779 (Fla. 2013) ("[T]his argument is unavailing because [the defendant] focuses on one word out of context without including the trial judge's actual statement.") (citations omitted).

Accordingly, we conclude the motion failed to demonstrate facts that, if true, would "place a reasonably prudent person in fear of not receiving a fair or impartial trial," and we affirm the judgment under review. Arbelaez v. State, 898 So. 2d 25, 41 (Fla. 2005) (citation omitted).

[1] "Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed." Fla. R. Jud. Admin. 2.330(e); see Stockstill v. Stockstill, 770 So. 2d 191 (Fla. 5th DCA 2000); Roy v. Roy, 687 So. 2d 956 (Fla. 5th DCA 1997).

Affirmed.