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Supreme Court of Kentucky

FINAL

2006-SC-000137-MR

DATE July 12, 07 E. A. Brown, Jr.
APPELLANT

JASON PATRICK BOZE

V.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
NO. 05-CR-00031

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

A circuit court jury convicted Jason Patrick Boze of first-degree burglary, first-degree assault, and first-degree unlawful imprisonment. He was sentenced to twenty-four years' imprisonment. Boze argues in this matter-of-right appeal that the trial court erred by (1) failing to hold a proper competency hearing, (2) failing to order re-evaluation of his competency to stand trial after his counsel informed the court that Boze reported to him that Boze was on suicide watch at the jail, and (3) allowing improper testimony from the complaining witness that Boze had told her about having a "physical altercation" with his girlfriend. Finding no error, we affirm.

I. FACTS.

Boze became friends with his neighbor, Maggie McKean. Although never romantically involved, Boze and McKean occasionally watched television and walked together. Boze also confided in McKean about problems he had with his girlfriend.

According to McKean's trial testimony, Boze came to her apartment door one evening asking to borrow her vacuum cleaner. As McKean turned to get it from the closet, Boze attacked her without provocation. He repeatedly beat her over the head with a vase he had brought with him. McKean tried to fend off the attack, and she tried to scream. But Boze choked her as she screamed. When she fell to the floor, he cupped his hand over her nose and mouth obstructing her breathing to the point that she lost consciousness.

When McKean regained consciousness, she was lying on the floor and her head was bleeding profusely and her skull was fractured. Boze bandaged her head. He told her he intended to kill her, tied her wrists behind her back, and strapped her to a bed with bungee straps he had brought with him. Over the next several hours, Boze held McKean bound and sometimes gagged and blindfolded. Although he offered apologies for what he was doing, he made bizarre comments like the military had left him hungry to kill someone or that he would kill her if she went to sleep or that he would die soon due to a rare disease.

Eventually McKean persuaded Boze to loosen the ties around her wrists and put her hands in front of her. She also convinced him to allow her supervised bathroom breaks. On the last of these breaks, McKean managed to escape to a nearby restaurant where she called for help. She was transported to the hospital by ambulance; the police went looking for Boze.

According to the investigating officers, failing to find Boze at McKean's apartment, the police went to Boze's apartment. Boze did not answer. A maintenance worker unlocked the door and admitted the police into Boze's apartment. There they

found Boze lying unresponsive on the bed. Boze, who had apparently taken non-prescription pain medication, was taken to the hospital where a police detective eventually questioned him about the incident at McKean's apartment. In a taped statement made to police and played at trial, Boze admitted to beating McKean with the vase and to keeping her bound in her apartment.

Over the next several months, Boze was evaluated several times by mental health professionals. Soon after his initial appearance in district court on the charges arising out of the incident at McKean's apartment, Boze was evaluated by Dr. Martin Smith at the local comprehensive care center. Dr. Smith determined that Boze was not competent to stand trial at that time; Dr. Smith prescribed an anti-psychotic medication and recommended that Boze be sent to the Kentucky Correctional Psychiatric Center (KCPC) for further evaluation and in-patient treatment. The district court then ordered Boze to KCPC for thirty days for psychiatric examination and treatment, requesting KCPC to report (1) whether Boze meets the criteria of "incompetency to stand trial"; (2) if incompetent to stand trial, "whether there is substantial probability of his attaining competency in the foreseeable future" and the type of treatment recommended; and (3) whether Boze "meets the criteria of 'insanity[.]'" A later order by the district court indicated that KCPC reported that Boze was incompetent to stand trial at that time but that "there is a substantial probability that [he] will attain competency in the near foreseeable future." That order authorized treatment for as long as 60 additional days at KCPC.

While at KCPC, Boze was evaluated by mental health professionals including Dr. Johnson, a clinical psychologist. Following a seven-week stint at KCPC, it was

Dr. Johnson's opinion that Boze was not incompetent to stand trial; and he was not legally insane.

Boze was returned to the local jail from KCPC and was not placed on any psychotropic medication at that time. Three months later, he was indicted on the charges of burglary, assault, and unlawful imprisonment.

Dr. Schilling, a private psychologist, evaluated Boze for the defense. He met with Boze several times between indictment and trial. Dr. Schilling also found Boze to be competent to stand trial, although he cited the need to evaluate Boze as trial approached.

At trial, Boze did not deny beating McKean with the vase or restraining her in her residence for the better part of two days. His defense was insanity. He testified to recalling little about the incident except that he seemed to be watching his parents argue. He also testified to the severe abuse he suffered as a child, to being honorably discharged from the navy due to mental illness issues, to a history of mental illness treatment, to prior suicide attempts, to stress at his job, and to troubles in his relationships.

Apparently rejecting the insanity defense and declining to find Boze guilty but mentally ill, the jury returned a verdict of guilty on the charges of first-degree burglary, first-degree assault, and first-degree unlawful imprisonment. The jury recommended sentences of twelve-and-a-half years' imprisonment each on the burglary and assault charges to run concurrently with each other, and five years' imprisonment on the unlawful imprisonment charges to run consecutively with the other charges. Thus, the jury recommended a sentence of seventeen-and-a-half years' total imprisonment. The

trial court accepted the recommended term for each charge but determined that six-and-a-half years on the assault conviction should run consecutively with the burglary conviction in addition to the five years on unlawful imprisonment running consecutively with the others. So the trial court effectively increased Boze's sentence to a total of twenty-four-and-one-half years' imprisonment, citing Boze's lack of remorse as the motivation for the deviation from the jury's recommendation.

II. ANALYSIS.

A. Boze Received an Adequate Competency Hearing.

About six months before trial, the trial court conducted a competency hearing. Defense counsel informed the court that both Dr. Johnson and Dr. Schilling had found Boze to be competent to stand trial and that both written reports had been filed in court.¹ Counsel for both sides stipulated that both Dr. Schilling and Dr. Johnson would testify consistently with their written reports. The trial court then asked if the parties wanted to offer any additional proof—including witness testimony—concerning competency, and the parties declined to do so. The trial court then declared Boze competent to stand trial and entered a written order to that effect.

Boze contends that the trial court failed to hold the type of competency hearing required by Kentucky Revised Statutes (KRS) 504.100 (3). He specifically argues that

¹ The trial court took note of Dr. Schilling's report at the hearing and inquired about Dr. Johnson's report in the record. Counsel explained that KCPC had sent Dr. Johnson's written report to the district judge who had ordered Boze to KCPC, and the report could be found in the district court record. Dr. Schilling's written report, which was filed in the circuit court record under seal ten days before the competency hearing, made reference to Dr. Johnson's evaluation of Boze and his findings of competency to stand trial and to criminal responsibility.

the competency hearing, which lasted only four minutes, was not truly an evidentiary hearing because no witnesses testified. We disagree.

We have said that KRS 504.100(3) mandates “an *evidentiary* hearing.”² And the hearing conducted by the trial court in the case at hand amply met that requirement. Both the Commonwealth and the defense submitted written expert’s reports, both finding Boze competent to stand trial. Both sides presented evidence in written form. Each side stipulated that its expert’s testimony would be consistent with the content of their reports.

We have also said that “in all cases a full-blown evidentiary hearing with witness testimony . . . may not always be necessary. In certain instances, judicial economy will dictate that an ‘abbreviated’ hearing should follow. For example, counsel may agree to stipulate to certain evidence, such as a mental health expert’s finding of competency, and the trial court could then make a finding of competency based upon those stipulations.”³

Boze did not object to the submission of the competing reports, and he did not suggest that there was more evidence available for the trial court to consider. Having acquiesced in the process, Boze will not be heard to complain that he was denied an evidentiary hearing.⁴ And since Boze’s own mental health expert expressed no doubt about his current competency to stand trial, we find no support for Boze’s assertion that

² Gabbard v. Commonwealth, 887 S.W.2d 547, 551 (Ky. 1994) (emphasis in original).

³ Quarels v. Commonwealth, 142 S.W.3d 73, 83 n.3 (Ky. 2004).

⁴ Kennedy v. Commonwealth, 544 S.W.2d 219, 222 (Ky. 1976) (stating that appellants will not be permitted “to feed one can of worms to the trial judge and another to the appellate court.”).

he is entitled to relief due to his allegation that the reports were not read by the trial court. The content of this report clearly supports the trial court's ruling.⁵

B. Boze Failed to Establish the Need for Re-evaluation of Competency Based On Counsel's Remark That Boze Was On Suicide Watch at the Jail.

A few months before trial, defense counsel told the trial court at a hearing to set the trial date that Boze reported to him that he had been on suicide watch at the jail. Defense counsel suggested that perhaps the "doctors" should "go back and see if anything has changed." But counsel never formally moved for Boze's competency to be re-evaluated or presented any proof to the trial court confirming Boze's suicide watch status at the jail. The case then proceeded to trial.

We find no error in the trial court's failure to order a re-evaluation of Boze's competency. We note that defense counsel offered no actual proof of suicide watch, and the defense apparently did not have a sufficient basis on which to make a motion that competency should be re-evaluated. We further note that being placed on suicide watch, in and of itself, does not mean that competency to stand trial is in doubt.⁶ Unless there is some reason for the trial court to believe that the defendant is unable to appreciate the nature and consequences of the proceedings against him/her or unable to participate in his/her defense,⁷ counsel's statement that a defendant is on suicide

⁵ See United States v. Ford, 184 F.3d 566, 581 (6th Cir. 1999) (applying Kentucky law stating that factual finding of defendant's competency to stand trial is subject to clearly erroneous standard of review).

⁶ Commonwealth v. Uderra, 862 A.2d 74, 88 (Pa. 2004) (holding that "unexplained temporary placement on jail suicide watch" was insufficient to cast doubt on defendant's competency to stand trial, "particularly in light of the record of Appellant's extensive assistance in his own defense").

⁷ KRS 504.060(4).

watch at the jail—without more—does not require the trial court to re-evaluate competency.

In the case at hand, counsel never made any representation to the court in connection with the suicide watch comment that Boze was unable to understand the nature and consequences of the proceedings against him or that Boze was unable to participate in his defense. After the comment, Boze appeared in court for several pretrial hearings; and the record demonstrates nothing in Boze's demeanor at these hearings that should have given the trial court reason to doubt his competency. So we fail to see how the trial court had "reasonable grounds to believe the defendant is incompetent to stand trial"⁸ in the months between the initial determination of competency and the trial.

Boze fails to demonstrate that he actually was incompetent to stand trial. His expert, Dr. Schilling, testified to his competency to stand trial and described how Boze was able to work with him in communicating his prior history, which assisted in Boze's defense. Boze himself also testified and coherently described his personal history at trial. The record indicates that he understood the nature of the proceedings against him and was able to rationally participate in his defense. We find no error in the trial court's failure to order another competency evaluation.

⁸ KRS 504.100(1) ("If upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court shall appoint one (1) psychologist or psychiatrist to examine, treat and report on the defendant's mental condition."); *see also* Bray v. Commonwealth, 177 S.W.3d 741, 750-51 (Ky. 2005); Mills v. Commonwealth, 996 S.W.2d 473, 486 (Ky. 1999) (indicating no reversible error occurs for failure to order a competency evaluation or hearing where there is no factual basis for trial court to doubt competency.).

C. Victim's Testimony Concerning Boze's Report of Fight With Girlfriend Did Not Deprive Him of Fair Trial.

McKean testified at trial about the incident and described her prior dealings with Boze, including a time approximately two months before the incident when he had come to her apartment crying over an argument with his girlfriend that had escalated into a physical fight. Boze made a motion in limine to exclude this testimony about the altercation with his girlfriend, but the trial court had denied it.

Boze argues that allowing the altercation testimony from McKean denied him a fair trial. Having reviewed the testimony, we disagree. McKean simply stated that Boze had come to her apartment upset on one occasion and told her of a "physical fight" with his girlfriend. She related no details about this fight. The jury was not directly told that Boze had assaulted his girlfriend. The possibility was left open that the girlfriend had assaulted him, and he had merely defended himself. And in light of the overwhelming evidence showing that Boze has committed the crimes for which he was tried, we find any error in admitting this testimony harmless.⁹

III. CONCLUSION.

For the foregoing reasons, we affirm the circuit court's judgment.

All sitting. All concur.

⁹ Kentucky Rules of Criminal Procedure (RCr) 9.24.

COUNSEL FOR APPELLANT:

Donna L. Boyce
Appellate Branch Manager
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

James C. Shackelford
Assistant Attorney General
Office of Criminal Appeals
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204