

Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 992,
La. C. Cr. P.

No. 52,743-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA

Appellee

versus

JOSEPH M. BRYANT

Appellant

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 327055

Honorable Brady D. O'Callaghan, Judge

* * * * *

LOUISIANA APPELLATE PROJECT
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* * * * *

Before MOORE, COX, and STEPHENS, JJ.

STEPHENS, J.

This criminal appeal arises from the First Judicial District Court, Parish of Caddo, State of Louisiana. The defendant, Joseph M. Bryant, was charged by bill of information with attempted aggravated rape (violations of La. R.S. 14:27 and 14:42) and armed robbery (a violation of La. R.S. 14:64). Following a jury trial, Bryant was convicted as charged. He was adjudicated a third-felony offender and sentenced to serve life imprisonment without benefit of probation, parole, or suspension of sentence. Bryant now appeals. For the following reasons, we affirm the convictions for attempted aggravated rape and armed robbery; however, we vacate the habitual offender adjudication and sentence and remand the matter for resentencing.

FACTS

At the trial held on November 8, 2017, the following evidence was adduced. On the morning of August 22, 2014, the victim, SS, was home alone watching television when her doorbell rang.¹ SS looked through the peephole, and observed a tall, dark-skinned black male, wearing a baseball cap, holding a business card. The man, later identified as the defendant, Joseph M. Bryant, indicated that he worked for a tree service and inquired if SS desired service at her home. SS declined, but cracked the door open just enough to take the business card from Bryant. As she opened the door, Bryant put his foot in the threshold of the door. SS noted the perpetrator was much larger than she. Bryant asked SS if her husband was home. When she said no, Bryant forced his way into SS's home.

¹ Herein, we use the initials of the victim's name in order to keep her identity confidential in accordance with La. R.S. 46:1844(W).

Once inside the home, SS observed Bryant holding a pocketknife. Bryant ordered SS not to scream and told her, "I am going to rape you and kill you," a threat he repeatedly made during the assault. SS and Bryant walked from the entryway of her home, through the dining room, into the kitchen, and eventually ended up in the den. While in the den, Bryant threw SS onto the sofa and again informed her that he was going to rape her. While still armed with the pocketknife, Bryant then straddled SS, throwing both of his legs on the outside of both of SS's legs and untied her robe. SS was wearing only a robe, nightshirt, and underwear. After untying SS's robe, Bryant lifted up SS's nightshirt and touched her vagina on top of her underwear. Throughout the incident, SS continually pleaded for her life and Bryant repeatedly told SS that he planned to rape and kill her. While pleading for her life, SS offered Bryant her vehicle, money, and jewelry. Bryant became interested in the money and got off SS, at which point she wrapped her robe around herself. Bryant followed her to the master bedroom to retrieve her purse. The two went back into the den, where Bryant took \$120 cash from SS. Somehow, with his knife still drawn, the two ended back up in the bedroom. For a second time, Bryant threw SS onto the bed and told her he would rape her. Bryant, again, untied SS's robe and straddled her—she could not move. SS made every effort to protect herself as she was being attacked.

Suddenly, Bryant stopped, sat up on the bed, and instructed SS to fix her robe. He then began to tell SS that she was a nice person and told her that his daughter had recently been killed. Bryant became emotional and began to weep. At that point, Bryant got off the bed and the two went into the sunroom, through the den, into the entryway, and arrived at SS's front

door. Bryant asked for a hug, SS relented, and Bryant exited the home. Having learned SS's first name at some point during the incident, Bryant called out to her from the other side of the door using her name. Bryant asked to reenter the home, and SS refused. Bryant then asked if SS intended to call the police and requested reentry a second time. Again, SS refused and eventually Bryant left. Afraid to call the police, SS called her husband, who then called police.

Later, Bryant was apprehended in connection with other incidents and arrested. When SS was shown a six-person photographic lineup, she identified Bryant as the man who entered her home on the morning of August 22, 2014. SS additionally made an in-court identification of Bryant at his trial.

Prior to trial, on June 3, 2015, Bryant's trial counsel made an oral motion for the appointment of a sanity commission. On September 14, 2015, after receiving reports from Dr. Marc Colon and Dr. George Seiden, the trial court found that Bryant lacked the ability to meet the legal criteria to assist in his own defense as required by *State v. Bennett*, 345 So. 2d 1129 (La. 1977). Bryant was ordered to receive treatment at the Eastern Louisiana Mental Health System, Forensic Division in Jackson, Louisiana ("ELMHS"). The criminal proceedings were stayed pending Bryant's restoration to competency.

On April 27, 2016, the staff psychiatrist at the ELMHS opined that Bryant had been restored to capacity. However, due to further concerns regarding his mental capacity, the trial court held the matter open pending a report from Bryant's medical providers. As a result, on May 31, 2016, a subsequent hearing was conducted, and Dr. Colon testified. After that

testimony, the trial court determined that Bryant's competency was not regained, and the stay in his proceedings continued.

On January 10, 2017, a final sanity hearing was held. The sanity commission was composed of Dr. Laura Brown and Dr. John Roberts, and both doctors opined that Bryant was malingering, or reporting severe symptoms that were likely not accurate. Dr. Roberts confirmed that Bryant's behavior when being evaluated differed from that of his behavior on the unit. Dr. Roberts further testified that it is difficult to know a patient's motivations and whether or not his motivation skews functioning. However, in this case, that consideration did not affect Bryant's restoration of competency.

Accordingly, the trial court deemed Bryant competent to proceed to trial, which commenced on November 8, 2017. Based on the evidence presented at trial, the jury returned verdicts of guilty as charged of attempted aggravated rape and armed robbery. Notably, Bryant does not challenge the sufficiency of the evidence.

A habitual offender hearing was held on January 4, 2018. Prior to the hearing, motions for post-verdict judgment of acquittal and new trial were denied by the trial court. John McCain, of the Caddo Parish Sheriff's Office, testified to two prior felonies committed by Bryant which occurred in Texas, where he was tried. Bryant was previously convicted of robbery on October 31, 1994, and of sexual assault on the same date but for a completely unrelated incident. Based on those prior convictions, the trial court adjudicated Bryant a third-felony offender and sentencing was held on the same day. The trial court sentenced Bryant to life imprisonment without the benefit of probation, parole, or suspension of sentence. Bryant

subsequently filed a motion to reconsider sentence, which was denied, and this appeal ensued.

DISCUSSION

Mental Capacity

In his first assignment of error, Bryant contends the trial court erred in finding him competent to proceed to trial. Specifically, Bryant argues he was deprived of a fair trial when he was forced to proceed to trial while he was still incompetent and unable to assist his trial counsel in his defense. In response, the state submits that several qualified physicians found Bryant competent to stand trial, and they noted he was malingering to avoid having the case proceed to trial. Further, his actions during the crime indicated a calculated plan, that of a competent individual. We agree.

Legal Principles

The Fourteenth Amendment's Due Process Clause protects an individual's right not to proceed to trial while legally incompetent. *State v. Odenbaugh*, 2010-0268 (La. 12/6/11), 82 So. 3d 215, *cert. denied*, 568 U.S. 829, 133 S. Ct. 410, 184 L. Ed. 2d 51 (2012); *State v. Taylor*, 49,467 (La. App. 2 Cir. 1/14/15), 161 So. 3d 963.

Louisiana C. Cr. P. art. 641 provides: "Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense." Louisiana C. Cr. P. art. 643 provides: "The court shall order a mental examination of the defendant when it has reasonable grounds to doubt the defendant's mental capacity to proceed." Reasonable ground in this context refers to information which, objectively considered, should reasonably raise a doubt about the defendant's competency and alert the

court to the possibility that the defendant can neither understand the proceedings, appreciate the proceedings' significance, nor rationally aid his attorney in his defense. *State v. Campbell*, 2006-0286 (La. 5/21/08), 983 So. 2d 810, *cert. denied*, 555 U.S. 1040, 129 S. Ct. 607, 172 L. Ed. 2d 471 (2008); *State v. Crossley*, 48,149 (La. App. 2 Cir. 6/26/13), 117 So. 3d 585, *writ denied*, 2013-1798 (La. 2/14/14), 132 So. 3d 410.

Louisiana law presumes a defendant's sanity. La. R.S. 15:432; *State v. Holmes*, 2006-2988 (La. 12/2/08), 5 So. 3d 42, *cert. denied*, 558 U.S. 932, 130 S. Ct. 70, 175 L. Ed. 2d 233 (2009); *State v. Anderson*, 51,603 (La. App. 2 Cir. 9/27/17), 244 So. 3d 640, *writ denied*, 2017-1913 (La. 6/1/18), 243 So. 3d 1062. Therefore, an accused bears the burden of proving by a preponderance of the evidence that he lacks the capacity to stand trial. *State v. Holmes, supra*; *State v. Taylor*, 49,467 (La. App. 2 Cir. 1/14/15), 161 So. 3d 963. Although a trial court may receive expert medical testimony on the issue of a defendant's competency to proceed to trial, the ultimate decision of capacity rests alone with the trial court. La. C. Cr. P. art. 647; *State v. Holmes, supra*; *State v. Anderson, supra*; *State v. Taylor, supra*. A reviewing court owes the trial court's determinations as to the defendant's competency great weight, and the trial court's ruling thereon will not be disturbed on appeal absent an abuse of discretion. *State v. Anderson*, 2006-2987 (La. 9/9/08), 996 So. 2d 973, *cert. denied*, 556 U.S. 1165, 129 S. Ct. 1906, 173 L. Ed. 2d 1057 (2009).

The Louisiana Supreme Court, in *State v. Bennett, supra*, provided the proper considerations to determine whether a defendant is fully aware of the nature of the proceedings against him, which include whether he: (1) understands the nature of the charge and can appreciate its seriousness; (2)

understands what defenses are available; (3) can distinguish a guilty plea from a not guilty plea and understand the consequences of each; (4) has an awareness of his legal rights; and, (5) understands the range of possible verdicts and the consequences of conviction. *Id.* at 1138; *State v. Anderson, supra* at 649-50.

The *Bennett* court also provided the following factors to consider when determining an accused's ability to assist in his defense, including whether a defendant: (1) is able to recall and relate facts pertaining to his actions and whereabouts at certain times; (2) is able to assist counsel in locating and examining relevant witnesses; (3) is able to maintain a consistent defense; (4) is able to listen to the testimony of witnesses and inform his lawyer of any distortions or misstatements; (5) has the ability to make simple decisions in response to well explained alternatives; (6) is capable of testifying in his own defense if necessary to defense strategy; and (7) is apt to deteriorate in his mental capacity under the stress of trial. *Id.*; *State v. Anderson, supra* at 650.

Bryant's Competency Proceedings

In the case sub *judice*, the trial court exercised great caution when Bryant's capacity was raised. On June 3, 2015, upon oral motion of trial counsel, the trial court appointed a sanity commission. The commission was composed of Dr. Marc Colon and Dr. George Seiden. Dr. Seiden concluded that "Joseph Bryant currently does not have the ability to consult with his attorney with a reasonable degree of rational understanding and currently does not have a rational and factual understanding of the proceedings against him." Dr. Colon came to the same conclusion. Accordingly, at that time the trial court found that Bryant lacked the ability to meet the *Bennett* criteria to

assist in his own defense. Bryant was ordered to receive treatment at the ELMHS. The proceedings were stayed pending Bryant's restoration to competency.

On April 27, 2016, a subsequent competency hearing was conducted. Dr. Dennis C. Kelly, Jr., a staff psychiatrist at the ELMHS, testified before the court. Dr. Kelly testified that Bryant had been diagnosed with schizoaffective disorder, bipolar type disorder, and post-traumatic stress disorder. Dr. Kelly further testified that Bryant was started on several medications and reported depression, hallucinations, and suicidal thoughts. Dr. Kelly noted that there was no indication that Bryant would act on those thoughts. Dr. Kelly ultimately concluded that Bryant had a reasonable understanding of the legal system and could assist his attorney in preparing a defense. However, upon the urging of trial counsel, Bryant's status of suicide watch at Caddo Correctional Facility, and Bryant's significant history with mental illness, the trial judge noted some concern that Bryant may have displayed some "regression" in his condition. Thus, the trial court suggested holding the hearing open, pending reports with the appointed psychiatric providers. All parties agreed.

Approximately one month later, on May 31, 2016, following testimony of Dr. Colon, the trial court found that Bryant's capacity had not been regained. Dr. Colon testified that since Bryant's return from the ELMHS, he had been on one-on-one observation. Dr. Colon further testified that Bryant made two overdose attempts, punched a wall, and complained of auditory hallucinations. Dr. Colon opined that Bryant was not malingering. Bryant was ordered to return to the ELMHS, and the stay of the criminal proceeding was maintained.

On January 10, 2017, a subsequent sanity hearing was held, at which both Dr. Laura Brown and Dr. John Roberts opined that Bryant was malingering or reporting severe symptoms that were likely not accurate. In her first assessment of Bryant, Dr. Brown, a clinical psychologist, noted that Bryant had suicide orientation, depression, and hopelessness. When asked about her second assessment of Bryant, Dr. Brown said:

Q: Okay. Let's move to the second assessment you performed. Can you discuss that for us, please?

A: Sure. The second assessment was the assessment toward the end of his hospitalization, when we were assessing his— understanding of his case and legal knowledge and his competency to proceed.

Q: And what did you learn?

A: In that one I gave a standardized competency measure, and he actually performed pretty well on it. He knew all of the information. He was able to demonstrate a rational understanding of all of the relevant things that happened in court. He knew about plea bargains, the legal system, possible consequences of his—his offenses if he . . . were found guilty.

So he understood all of that. He also knew how he could assist in his defense. He talked about what kind of things he should tell his lawyer or what his lawyer expected from him, but he also demonstrated some sort of self-defeating beliefs.

Q: What do you mean?

A: That he didn't really want to assist in his defense. He made that very clear that he didn't want to go forward with his case. He felt hopeless about the results of his case.

Further, Dr. Brown testified that Bryant disclosed to a security guard that he would go on a hunger strike and become suicidal so as not to go back to the parish jail. Additional query by the trial court of Dr. Brown included:

THE COURT: Dr. Brown, it appears from the reports that I've reviewed, which I think is all of them—that when Mr. Bryant is aware he is being assessed for a determination that bears on his competency, he presents one affect, but the report from all of those who deal with him on an informal, non-evaluative basis,

describe a very different affect, much more emotional, far less blunt. Is that a fair characterization of what you determine from your observations?

DR. BROWN: Yes.

Dr. Roberts' opinion corroborated that of Dr. Brown. Dr. Roberts, a psychiatrist and Bryant's treating physician the entire time he was housed at the ELMHS, diagnosed Bryant with a depressive disorder, unspecified personality disorder, as well as numerous other medical conditions. Dr. Roberts testified that while speaking with therapists, Bryant would have constricted affect, claim suicidality, and slow speech. However, Dr. Roberts' observations of Bryant on the unit differed. Although Bryant claimed he could not concentrate, he came in second place in a unit video game championship and read books in his room. Dr. Roberts further testified that it is difficult to know a patient's motivations and whether or not functioning is skewed. In this case, that consideration did not seem to interfere with Bryant's restoration of competency. The trial court asked Dr. Roberts:

THE COURT: Based on your treatment of Mr. Bryant, are you aware of any aspect of his psychiatric condition that if he were motivated would preclude his ability to cooperate with his lawyer?

DR. ROBERTS: No.

.....

THE COURT: Based on his ability to communicate with you, [Dr. Roberts], the staff, is it your medical opinion that Mr. Bryant is capable and competent to stand trial, if he performs as he did during his most recent evaluations?

DR. ROBERTS: Yes, I do believe that he has a current rational, as well as a factual, understanding of the proceedings against him, as well as the present ability to consult with his lawyer to a reasonable degree of rational understanding.

Analysis

In this case, over the course of the proceedings against Bryant, it is abundantly clear that the trial court went through painstaking efforts to ensure the defendant was afforded his constitutional rights in regard to his competency to stand trial for these offenses. In fact, the concern and level of understanding by the trial judge stands out in this record—the comments made and questions asked. Four separate hearings were held, with testimony from five different doctors. The trial court twice found that Bryant was not competent to proceed to trial. However, upon the medical opinions of Drs. Brown and Roberts that Bryant was malingering to avoid facing serious consequences, the trial court used its discretion to find Bryant competent to proceed to trial. The medical providers at the final proceeding went into great detail regarding Bryant’s condition and behavior. They were questioned by both parties as well as the trial judge, who was well familiar with Bryant’s medical reports. Based on the above evidence, the trial court did not abuse its discretion in finding that the defendant was competent to proceed to trial. Accordingly, this assignment of error is without merit.

Habitual Offender Adjudication

In his second assignment of error, Bryant argues the trial court erred in adjudicating him a third-felony offender. Bryant submits he was erroneously adjudicated a third-felony offender because he obtained two prior convictions on the same day and, accordingly, the convictions are one prior conviction for purposes of enhancement as mandated in La. R.S. 15:529.1(B). We agree.

Legal Principles

Our habitual offender law is promulgated in La. R.S. 15:529.1.

Bryant was adjudicated a third-felony offender under subsection (A)(3) of the statute, which provides:

If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then the following sentences apply:

(a) The person shall be sentenced to imprisonment for a determinate term not less than one-half of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction.

(b) If the third felony and the two prior felonies are felonies defined as a crime of violence under R.S. 14:2(B), or a sex offense as defined in R.S. 15:541 when the victim is under the age of eighteen at the time of commission of the offense, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Moreover, La. R.S. 15:529.1(B) provides in pertinent part:

B. It is hereby declared to be the intent of this Section that an offender need not have been adjudged to be a second offender in a previous prosecution in order to be charged as and adjudged to be a third offender, or that an offender has been adjudged in a prior prosecution to be a third offender in order to be convicted as a fourth offender in a prosecution for a subsequent crime. ***Multiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section.***

(Emphasis added.)

The Louisiana Supreme Court, in *State v. Shaw*, 2006-2467 (La. 11/27/07), 969 So. 2d 1233, 1245, explained that “[t]here is no statutory bar to applying the habitual offender law in sentencing for more than one conviction obtained on the same date, whether the convictions result from separate felonies committed at separate times or arise out of a single

criminal act or episode.” However, the *Shaw* court specifically noted that the legislature enacted 2005 La. Acts 218, amending La. R.S. 15:529.1(B) to provide that “[m]ultiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section.” This amended the jurisprudential repudiation of the “one day, one conviction” rule in the computation of predicate offenses for purposes of determining habitual offender status, according the decision only prospective effect and reflecting legislative endorsement of the court’s interpretation of the habitual offender law and its return to the plain language of the statute. *See also, State v. Badeaux*, 2018-0020 (La. App. 1 Cir. 6/4/18), 251 So. 3d 1134, *writ denied*, 2018-1066 (La. 3/18/19), 267 So. 3d 85; *State v. Hagans*, 2014-0050 (La. App. 4 Cir. 10/1/14), 151 So. 3d 719, *writ denied*, 2014-2149 (La. 5/15/15), 170 So. 3d 159.

Analysis

In adjudicating Bryant a habitual offender, the trial court relied on two previous convictions in Texas. A review of the record shows that Bryant was convicted of robbery in Dallas County, Texas, on October 31, 1994, which offense occurred on June 19, 1992. For that conviction, Bryant received a sentence of 20 years. Additionally, Bryant was convicted of sexual assault in Dallas County, Texas, on the same day—October 31, 1994. That offense occurred on April 9, 1994, and Bryant received a sentence of 10 years. Both offenses are felony offenses in the state of Texas, and, therefore, would be considered felony offenses in Louisiana. *See*, La. R.S. 15:529.1(A).² Thus, although for different crimes committed on different

² The statute requires Louisiana courts to determine the analogous state crime according to the nature of the act involved, not the penalty provided for the offense in the

dates, Bryant had “multiple convictions obtained on the same day prior to October 19, 2004,” *i.e.*, two convictions on October 31, 1994. Moreover, we note that the record further shows Bryant was released from the supervision of the Texas Department of Criminal Justice Pardons and Parole Division on February 7, 2014. Thus, more than 10 years has not elapsed and the prior offenses can be used as predicate offenses for purposes of sentencing enhancement.

However, the issue here is whether or not the predicate offenses count as two separate convictions for purposes of determining Bryant’s habitual offender status. While the two predicate offenses occurred on different dates, the convictions for both offenses were obtained on the same date prior to October 19, 2004. Louisiana R.S. 15:529(B) and the Louisiana Supreme Court in *Shaw, supra*, clarify that because the convictions were obtained prior to October 19, 2004, the convictions are considered one conviction for purposes of the habitual offender adjudication. Accordingly, Bryant was erroneously adjudicated a third-felony offender.³ Therefore, the habitual offender adjudication and sentence must be vacated and the matter remanded for resentencing.

foreign jurisdiction. *State v. Carouthers*, 618 So. 2d 880, 882 (La. 1993). In this case, the trial court made a thorough and legally appropriate analysis of the predicate offenses in Texas. *See also, State v. Wheatley*, 550 So. 2d 724 (La. App. 2 Cir. 1989), *writ denied*, 569 So. 2d 979 (La. 1990); *State v. Godfrey*, 2008-828 (La. App. 3 Cir. 3/3/10), 32 So. 3d 1020, *writ denied*, 2010-0758 (La. 10/29/10), 48 So. 3d 1097.

³ It should be noted that based on the ruling in *Shaw, supra*, Bryant’s sentences for the current convictions of attempted aggravated rape and robbery, which occurred on the same date, can both be enhanced pursuant to the appropriate habitual offender adjudication.

CONCLUSION

For the foregoing reasons, the convictions against Joseph M. Bryant for attempted aggravated rape and armed robbery are affirmed. His habitual offender adjudication and sentence are vacated and the matter remanded for resentencing.

CONVICTIONS AFFIRMED; ADJUDICATION AND SENTENCE VACATED; REMANDED FOR FURTHER PROCEEDINGS.