IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-KA-00740-SCT

CYNTHIA LOUISE ROBINSON a/k/a CYNTHIA ROBINSON

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT:	04/11/2019
TRIAL JUDGE:	HON. GERALD W. CHATHAM, SR.
TRIAL COURT ATTORNEYS:	JESSICA L. MASSEY ANGELA MARIE HUCK
COURT FROM WHICH APPEALED:	DESOTO COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: W. DANIEL HINCHCLIFF GEORGE T. HOLMES
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY:	JOHN W. CHAMPION
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 09/10/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE RANDOLPH, C.J., ISHEE AND GRIFFIS, JJ.

ISHEE, JUSTICE, FOR THE COURT:

¶1. Cynthia Robinson was convicted of conspiracy and possession with intent to distribute hydrocodone after being intercepted by police on her way to meet a confidential informant. On appeal, Robinson contends that the trial court erred by denying her motion for a mental evaluation. Robinson's counsel asserted that Robinson was not effectively assisting in her own defense and pointed to Robinson's YouTube videos espousing conspiracy theories and

to her prior diagnosis of a drug-induced psychotic disorder. Robinson personally asked the court to deny the motion, which it ultimately did—the trial judge cited his prior experience with Robinson and his prior findings that she was "reasonable and rational" and had "presented herself well . . . before the Court." Robinson went on to testify in her own defense, and she appeared fully aware of the allegations against her and presented a coherent theory of her defense. We affirm Robinson's convictions and sentences.

FACTS

¶2. Summer Rose testified that she knew Cynthia Robinson from rehab. According to Rose, Robinson offered to sell her Lortab pills, which contained the controlled substance hydrocodone. They arranged to meet the next day to consummate the sale. Rose, who was a confidential informant, then went to the Hernando police department to set up the deal and to get the money to make the buy. The officers took photographs of Rose's phone showing text messages exchanged between Rose and Robinson, and they recorded the subsequent calls between Rose and Robinson. Rose called Robinson three times that day. She asked Robinson how many Lortab pills she had available, and she told Robinson she intended to buy twenty or thirty with a friend's money. They arranged to meet at a grocery store in Hernando. But Robinson misunderstood Rose's directions and ended up going to a different grocery store in Southaven or Horn Lake. Rose then talked to Robinson again and told her they had to meet in Hernando because it was near her home and she was walking. Rose asked Robinson to meet her at a dollar store in Hernando, and Robinson agreed. Finally,

Rose added that when she bought pills from Robinson, she usually got them from Robinson's mother, Sylvia Haynes.

¶3. On cross-examination, Rose admitted that a few days before arranging the deal with Robinson, she had been charged with possession of heroin. Rose had ultimately been indicted as a habitual offender.

¶4. Officer Cody Caldwell was a narcotics detective with the Hernando Police Department. Officer Caldwell testified that Rose, a confidential informant, had told him she could purchase hydrocodone from Cynthia Robinson. A sale was arranged, but Rose was on probation in Tennessee and would violate the terms of her probation by possessing drugs, so Robinson would have to be arrested before the transaction actually occurred.

¶5. Officer Caldwell recounted substantially the same sequence of conversations and events leading up to Robinson's arrest. Another officer stopped Robinson's vehicle, and Officer Caldwell went to the scene. Robinson was driving, and Robinson's mother, Sylvia Haynes, was a passenger. Haynes had what appeared to be twenty-four pills containing hydrocodone on her person.

¶6. Robinson was arrested at the scene, but Haynes was released due to her advanced age and poor health. Haynes was eventually indicted along with Robinson. The pills were sent to the Mississippi Crime Lab for analysis.

¶7. Steve Sanders, a forensic scientist specializing in drug analysis and employed by the Mississippi Crime Lab, testified as an expert witness that he had analyzed one of the twenty-four identical pills. It contained acetaminophen and hydrocodone.

¶8. The defense called Robinson's mother, Sylvia Haynes. She testified that she had a prescription for hydrocodone. She had never sold it or witnessed Robinson sell it to anyone. Haynes recounted how she and Robinson had been pulled over. Robinson was driving because of Haynes's poor health. The police searched Robinson and the vehicle, but they found nothing. Haynes complained that the stop was physically difficult for her and that the police had damaged her vehicle while searching it. When the officers asked Haynes what she had on her, she told them about her pain pills, and the officers took them.

¶9. Haynes added that she had been diagnosed with dementia recently, and the charges against her had been remanded because of her poor health. Her doctor had advised her not to participate in court proceedings.

¶10. Robinson took the stand in her own defense. She testified that she had met Rose at a rehab clinic the morning of the alleged sale. Rose had been using drugs, including heroin. She had told Robinson she might need a ride that afternoon. Rose also suggested she would repay $50 she owed Robinson and offered to sell her some methadone. That afternoon, Rose called to ask for a ride. Robinson said she believed that Rose's mentions of money were either in reference to the money she owed Robinson or were part of Rose's attempt to sell Robinson methadone.

¶11. On cross-examination, Robinson elaborated that she had decided not to meet with Rose or to give her a ride because Rose had sounded intoxicated on the phone. Robinson could not understand some of what Rose was saying. Robinson had humored Rose when she called, but she had no intention of meeting Rose or buying methadone from her.

¶12. Robinson had been in Hernando on other business; she was pulled over earlier that day in nearby Horn Lake and was nearly arrested on a warrant that had been issued as a result of her niece's stealing her identity. Robinson had to prove she was not the subject of the warrant by pulling down her pants and showing the officer she did not have tattoos like her niece. Robinson had then been told by the officer to meet with a police investigator in Hernando to get the warrant situation straightened out; Robinson was on her way to the Hernando Police Department when she was pulled over as a result of Rose's attempt to set her up. Robinson also alleged she had been mistreated in custody and had been pressured to recant her allegations she had been raped by police officers in DeSoto County.

¶13. Robinson was convicted of one count of conspiracy to possess and dispense twenty dosage units or more but less than forty dosage units of hydrocodone in violation of Mississippi Code Section 97-1-1(a) (Rev. 2014) and one count of possession with intent to distribute twenty dosage units or more but less than forty dosage units in violation Mississippi Code Section 41-29-139(a)(1) (Rev. 2018). She was sentenced to five years' imprisonment on each count, with fifteen years' post-release supervision, and the sentences were ordered to be served concurrently.

DISCUSSION

¶14. Rule 12.2(a) of the Mississippi Rules of Criminal Procedure provides that "[i]f at any time before or after indictment, the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent, the court shall order the defendant to submit to a mental examination." MRCrP 12.2(a). If the trial court

orders a mental examination, it "shall promptly hold a hearing to determine the defendant's competency" after the mental examination reports are received. MRCrP 12.5(a).

¶15. Rule 12.1(a) further provides that "[i]n order to be deemed mentally competent, a defendant must have the ability to perceive and understand the nature of the proceedings, to communicate rationally with the defendant's attorney about the case, to recall relevant facts, and to testify in the defendant's own defense, if appropriate." MRCrP 12.1(a). But "[t]here is a presumption of mental competency." MRCrP 12.1(a). "The burden of proof rests on the defendant to prove that he is mentally incompetent to stand trial." ***Moore v. State***, 287 So. 3d 189, 196 (Miss. 2020) (internal quotation marks omitted) (quoting ***Evans v. State***, 226 So. 3d 1, 14 (Miss. 2017)). A motion for mental examination "shall state the facts upon which the mental examination is sought." MRCrP 12.2(d).

¶16. "On review, the pertinent question is whether 'the trial judge received information which, objectively considered, should reasonably have raised a doubt about the defendant's competence and alerted [the judge] to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense.'" ***Moore***, 287 So. 3d at 196 (internal quotation marks omitted) (quoting ***Harden v. State***, 59 So. 3d 594, 601 (Miss. 2011)). "'What constitutes "reasonable ground" . . . rests largely within the discretion of the trial judge.'" ***Id.*** (internal quotation marks omitted) (quoting ***Harden***, 59 So. 3d at 601).

¶17. The motion for a mental examination filed by Robinson's counsel cited several facts in support. First, it noted that in 2015, Robinson had undergone a court-ordered mental

evaluation. Robinson had been found competent to stand trial, but she was diagnosed provisionally with "Opioid Use Disorder, severe, in a controlled environment, Benzodiazepine Use Disorder, severe, in a controlled environment, and Drug Induced Psychotic Disorder, in remission." The 2015 report had cautioned that "[Robinson] needs to be monitored closely as her condition could deteriorate quickly if she becomes noncompliant with her current medications." The motion for a mental exam noted that as far as the attorney was aware, Robinson was no longer taking psychiatric medications.

¶18. Notably, the motion for a mental exaination conceded that if questioned, Robinson "will most likely demonstrate an understanding of the nature of the proceedings against her." It went on to say, however, that

> Robinson's inability to put aside paranoid thoughts and conspiracy theories undermines her ability to comprehend what is going on with her court case. The necessity of a mental evaluation is due to Robinson's inability to confer with her attorney in efforts to assist in her own defense, her inability to be present in and live in reality, her inability to communicate with defense counsel without delving into extreme conspiracy theories and delusions, and her possible inability to understand right from wrong due to a psychotic disorder at the time of the alleged offense.
>
> When defense counsel has attempted to confer with Robinson in preparation for trial, Robinson attempts to provide tidbits of information for defense counsel to investigate for her defense in between describing elaborate conspiracy theories involving foreign objects being placed in her body for cyber sex slavery, allegations of various medical and government persons performing torture on her, and statements that surveillance programs are spying on her through implanted medical devices. Defense counsel submits that, in my non-medical opinion, Robinson is actively mentally ill and may no longer be in remission as Dr. Lott found she was during her prior mental evaluation four (4) years ago. Such being even more likely due to the fact that, to the best of my knowledge, Robinson is not currently receiving any psychiatric medication.

¶19. At the hearing on the motion, Robinson's counsel elaborated. She told the Court that Robinson had told her in January 2019 "about devices being implanted in [Robinson's] body." The attorney noted that Robinson had made similar claims in YouTube videos posted several months before the alleged offense. The attorney also said she could not "distinguish what is real and what isn't real" in what Robinson had told her. The attorney had limited investigative resources and had "already looked into one of [the things Robinson had told her]" but "didn't get any results . . . just wasted my time basically." The attorney was afraid Robinson would "send a defense attorney like me down a whole bunch of rabbit holes that I don't want to go down."

¶20. Robinson interjected to say she had been "high" when the YouTube videos were made. She complained that she had talked to her attorney "about some things in confidentiality that I didn't know she was going to bring up in this case," things that had "nothing to do with this case." Robinson went on to assert that she really had "done DEA work." She listed the names of several individuals she said would have corroborated her account, but she complained that her attorney "ain't contacting the people I asked to contact." The attorney did not contest that she had not contacted the people Robinson listed, but she did say she had "contacted the [Mississippi Bureau of Narcotics], who does sometimes work hand-in-hand with the DEA . . . [T]hey searched the [database] for [confidential informants]" and apparently could not verify Robinson's claims. Robinson replied that she did not intend to mislead her attorney or waste her time and that she "didn't know [the attorney would] talk to the wrong people."

¶21. Robinson further explained that her niece had stolen her identity, leading to erroneous reports she had been arrested. And she complained about the time she had spent waiting for the prior mental examination and averred she was "ready to get this case over and done."

¶22. The assistant district attorney said she was familiar with Robinson and that her behavior had been "consistent for the past eight years that I've dealt with her." But the State nonetheless did not object to the motion for a mental examination.

¶23. After a lengthy colloquy between Robinson, her attorney, and the trial judge, the trial judge denied the motion for a mental examination. The judge ruled:

> The Court has got before it now a motion for a mental examination and treatment. The defendant has requested here in open court that this matter be allowed to proceed to trial. The Court finds that she's made a reasonable and rational argument here before this Court.
>
> Her counsel has stated things that Ms. Robinson has said to her concerning people trying to implant things in her body, so forth and so on. And understand, this is not the first time this Court has heard this. This is allegations that have were made I think back in 2014, were made when she had Adam Emerson as her other attorney. I've heard all of this before.
>
> The Court does not find this is sufficient grounds to delay the trial. She's presented herself well here before the Court. And the Court is going to overrule the motion for a mental evaluation.

¶24. We find no abuse of discretion. Most of Robinson's brief on appeal is dedicated to arguing that she had been (provisionally) diagnosed with a mental disorder. But "[t]he presence of a mental illness, defect, or disability alone is not grounds for finding a defendant incompetent to stand trial." MRCrP 12.1(a). "The . . . diagnosis of a mental illness or defect, without more, does not 'reasonably . . . raise[ ] a doubt about the defendant's competence . . . .'" ***Moore***, 287 So. 3d at 197 (alterations in original) (quoting ***Harden***, 59 So. 3d at 601).

> This Court has found that no competency hearing was required in cases in which the defendant was diagnosed with schizophrenia, ***Conner v. State***, 632 So. 2d 1239, 1248 (Miss. 1993), *overruled on other grounds by* ***Weatherspoon v. State***, 732 So. 2d 158 (Miss. 1999), bipolar disorder, [***Hearn v. State***, 3 So. 3d 722, 729 (Miss. 2008)], and mental retardation, ***Harden***, 59 So. 3d at 601.

Moore, 287 So. 3d at 197.

¶25. Robinson had been found competent after the previous mental examination, and she had been a registered nurse before her drug use. Robinson's attorney admitted that Robinson "will most likely demonstrate an understanding of the nature of the proceedings against her." The record bears that out through Robinson's dialogues with the trial court and her attorney, as well as her testimony in her own defense at the trial.

¶26. Robinson's counsel claimed that Robinson would not communicate effectively with her, but Robinson had no difficulty communicating on the record. We emphasize that competency is the *ability* to rationally communicate with one's attorney about the case. MRCrP 12.1(a). Robinson's penchant for tangents, conspiracy theories, and "rabbit holes" were only cited for wasting the attorney's time and resources. The record gives no indication Robinson was *unable* to assist in her defense.

¶27. Finally, we point out that "the trial judge had the benefit of speaking with [Robinson] directly and observing [her] in person" and therefore that court's conclusions about Robinson's competency should not be lightly disturbed. ***Moore***, 287 So. 3d at 197 (citing ***Harden***, 59 So. 3d at 601). The trial judge "sees the evidence first hand; he observes the demeanor and behavior of the defendant." ***Id.*** (internal quotation marks omitted) (quoting ***Conner***, 632 So. 2d at 1248). As this Court said in ***Moore***,

> On this point, ***Harden*** is instructive. It was undisputed that Harden suffered from mental deficiencies, including mild mental retardation. . . . Harden's attorney asked for a mental examination and a competency hearing, and both were refused. At an abortive plea hearing, Harden "had difficulty responding to questioning by the trial court" and "stated that he did not understand the contents of the plea petition," even after conferring again with counsel. Nonetheless, the trial court refused to hold a competency hearing, and Harden was ultimately convicted. This Court affirmed based on the trial judge's having personally observed the defendant—"Although this Court lacks the benefit of having observed Harden, given the broad discretion afforded to trial courts in determining whether to order a mental evaluation and competency hearing, we cannot say the ruling was outside the trial court's discretion." This Court further observed . . . the trial judge had expressed a "willingness to consider other evidence pertaining to [the defendant's] competency . . . ."

Moore, 287 So. 3d at 197-98 (third alteration in original) (citations omitted). ***Moore*** itself is likewise instructive. Moore walked out of the courthouse in the middle of his trial. ***Id.*** at 193. He had been previously diagnosed with PTSD, and an attorney he had attempted to hire appeared in court to say she believed Moore was "not in his right mind." ***Id.*** at 196 (internal quotation marks omitted). Nonetheless, this Court found no error in the trial court's decision not to hold a competency hearing; we cited the trial judge's in-person observations of the defendant as one of the principal reasons to affirm. ***Id.*** at 197-98.

¶28. The trial judge here had the benefit of observing Robinson over several *years*. As the judge put it, "[Robinson] and I have a history." The prosecutor added that Robinson's "behavior [had been] consistent for the past eight years that I've dealt with her." The Court also had the benefit of a prior mental examination, which had found Robinson competent to stand trial. The trial judge's findings about Robinson's competency were subsequently confirmed by Robinson's appearance and testimony at trial. While her defense was unsuccessful, her testimony was coherent and internally consistent. We can find no abuse

of discretion in the trial judge's decision not to order a mental examination, and we affirm Robinson's convictions and sentences.

¶29. **AFFIRMED.**

RANDOLPH, C.J., COLEMAN, MAXWELL, BEAM AND GRIFFIS, JJ., CONCUR. KITCHENS, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, P.J. CHAMBERLIN, J., NOT PARTICIPATING.

KITCHENS, PRESIDING JUSTICE, DISSENTING:

¶30. The trial judge abused his discretion when he disregarded the concerns raised by two officers of the court—Robinson's attorney and the prosecutor—and adjudicated that Robinson was mentally competent based on his finding that Robinson's behavior was consistent with the judge's prior dealings with her. While this Court is to give discretion to the trial judge, that discretion is limited because

> [i]n determining whether an abuse of discretion occurred, this Court considers whether "the trial judge received information which, objectively considered, should reasonably have raised a doubt about the defendant's competence and alerted the judge to the possibility that the defendant could neither understand the proceedings, appreciate their significance, *nor rationally aid his attorney in his defense*."

King v. State, 269 So. 3d 98, 100 (Miss. 2018) (emphasis added) (quoting ***Goff v. State***, 14 So. 3d 625, 644 (Miss. 2009)). Here, the trial judge was informed that Robinson previously had undergone a court-ordered mental evaluation, that Robinson was providing irrational theories, and that an officer of the court—Robinson's attorney—had informed the trial judge that her client was unable to aid in her defense. I find that when this evidence is considered as a whole, reasonable grounds demonstrated that Robinson was mentally incompetent to

stand trial, such that the trial court should have ordered a mental examination in accordance with Mississippi Rule of Criminal Procedure 12.2(a).

¶31. The majority and the trial judge mistakenly focus on the consistency of Robinson's current behavior to her behavior at some time in the past rather than inquiring into Robinson's mental condition at the time of the hearing on the motion for a mental examination. The question before the trial court was not whether Robinson's behavior at the time of the hearing was consistent with her past behavior; rather, the question was whether her mental state at the time of the hearing was interfering with her ability to communicate rationally with her attorney and to aid in her own defense. The uncontradicted evidence established that it did and that the trial judge should have ordered a mental examination. Therefore, I respectfully dissent, and I would reverse and remand this case for further proceedings.

¶32. Rule 12.1(a) of the Mississippi Rules of Criminal Procedure requires that a defendant possess several abilities in order to be deemed mentally competent, not just the ability to understand the nature of the proceedings. MRCrP 12.1(a) ("In order to be deemed mentally competent, a defendant must have the ability to perceive and understand the nature of the proceedings, to communicate rationally with the defendant's attorney about the case, to recall relevant facts and to testify in the defendant's own defense, if appropriate."). While the defense attorney acknowledged to the trial court that Robinson likely could understand the nature of the proceedings, the attorney's main concern was Robinson's inability to assist rationally in her own defense.

¶33. The majority "emphasize[s] that competency is the *ability* to rationally communicate with one's attorney about the case[]" and determines that Robinson possessed the ability to communicate because "Robinson had no difficulty communicating on the record." Maj. Op. ¶ 26. The majority is emphasizing the wrong word. Rule 12.1(a) requires not only that a defendant to have the ability to communicate but requires also that the communication be rational. MRCrP 12.1(a). Robinson's attorney explained to the judge that the communication between Robinson and her attorney deteriorated as time went on and that Robinson's irrational behavior was causing her attorney to be unable to "distinguish what [was] real and what [was not] real." Communication with one's attorney cannot be deemed rational if the lawyer could not distinguish reality from fiction concerning information conveyed to her by the client.

¶34. The majority finds that there is no evidence in the record that "Robinson was *unable* to assist in her defense[]" because "Robinson's penchant for tangents, conspiracy theories, and rabbit holes were only cited for wasting the attorney's time and resources." Maj. Op. ¶ 26. The majority does not consider the wasting of an attorney's time and resources as a means of hindering one's defense. By distracting her attorney with her irrational theories, Robinson took the attorney away from the productive pursuit of real defenses that might have helped Robinson. Unwittingly, Robinson was hindering her defense, not assisting it with her irrational rambling. It should be noted as well that evidence of a mentally incompetent person's inability to communicate rationally with her attorney usually is not found in the record. Such things, by their very nature, occur for the most part during private, unrecorded

meetings. As was done here, communication difficulties with clients are reported to the presiding judge by attorneys who are legally and ethically bound by duties of candor. Miss. R. Pro. Conduct 3.3(a)(1).

¶35. The majority fails to recognize the entirety of Dr. Lott's findings in Robinson's 2015 mental evaluation report, particularly his concern for Robinson's future mental health. *See* Maj. Op. ¶ 28 ("The Court also had the benefit of a prior mental examination, which had found Robinson competent to stand trial."). While Robinson's prior court-ordered mental evaluation, which was performed by Dr. Lott, found her mentally competent in 2015, Dr. Lott had expressed his concern that Robinson's condition could deteriorate quickly in the future if she became noncompliant concerning her medications. Robinson's attorney informed the trial judge that, to her knowledge, Robinson had not been receiving any medication. The trial court did not take this into account in deciding that Robinson was mentally competent to stand trial. Dr. Lott's concerns about Robinson's future mental health, the attorney's statement that Robinson had not been taking her medication, and Robinson's inability to assist in her defense should have alerted the trial judge that Robinson's mental competency was in question and should be investigated by means of a mental examination.

¶36. Both attorneys, prosecution and defense, were in favor of the court's ordering a mental examination. After hearing Robinson's attorney's concerns, the prosecuting attorney, who like the judge had prior dealings with Robinson, told the trial judge that "out of an abundance of caution, . . . I do think Ms. Robinson needs to undergo a mental evaluation, so I don't have any objection if that's what the court decides." Instead of exercising the same caution shown

by Robinson's attorney and the prosecutor, the trial judge disregarded those concerns and, in reliance on his past dealings with the defendant, denied Robinson's request for a mental examination.

¶37. When a lawyer expresses concern for a client's ability to communicate with his or her attorney in a rational way and to aid in the defense, courts should err on the side of caution by ordering a mental examination. This is especially true when the accused has, as here, a history of court-ordered mental examinations. The defense attorney appears to have represented in good faith that Robinson struggled to communicate rationally with her attorney and that Robinson's irrationality hindered her defense. Therefore, I would reverse and remand this case.

KING, P.J., JOINS THIS OPINION.