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NO. COA01-925

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 00 CRS 56359

EDDIE ALEXANDER BOLER,
Defendant.

Appeal by defendant from judgment entered 31 May 2001 by Judge Howard R. Greeson, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 22 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General Sueanna P. Sumpter, for the State.

William B. Gibson for defendant appellant.

HUDSON, Judge.

Defendant appeals his conviction for assault with a deadly weapon inflicting serious injury. We find no error in the trial court's judgment.

The State's evidence tended to show that on the night of 25 September 2000, defendant approached his former girlfriend, Cheryl Spears, as she was walking home. One of defendant's hands was cupped with the palm facing away from Spears. Defendant knocked Spears to the ground, announced he was going to kill her, and stabbed her twice in the back with a knife. Spears grabbed the

knife blade and broke it from the handle, cutting her hands in the process. Defendant fled. Spears ran to her house with the blade and told her daughter to call 911. Winston-Salem Police Officer R.S. Bodle responded to the scene and found Spears in her kitchen with "blood all over the place." The flesh of her little finger was cut away from the bone. Spears was bleeding from her back and hands and was experiencing "real throbbing pain" from the wounds. She told Bodle it was "the worst pain that she had ever gone through." Spears was hospitalized for twenty-four hours, receiving staples in her back and stitches on one hand. As a result of her injuries, Spears had scars on her back and hand, lost all feeling in her left little finger, and was numb in an area on her back above the shoulder blade.

Defendant elected not to testify or call any witnesses. The trial court denied his motion to dismiss at the conclusion of the evidence.

Defendant first contends that the trial court violated his right to due process by allowing him to dismiss his court-appointed attorney and represent himself. Defendant notes that he had been committed to Dorothea Dix Hospital for a competency evaluation approximately one month prior to trial. Although he was found to be competent, he avers that the trial court abused its discretion in failing to conduct a competency hearing in response to his "obviously self-destructive decision" to proceed *pro se*.

As a correlate to the right to counsel, a criminal defendant has the alternative constitutional right to self-representation

without the assistance of counsel. *See State v. LeGrande*, 346 N.C. 718, 722-23, 487 S.E.2d 727, 729 (1997), *reh'g denied*, 351 N.C. 365, 542 S.E.2d 650 (2000). "Before a defendant is allowed to waive appointed counsel, the trial court must insure that constitutional and statutory standards are satisfied." *Id.* The court must conduct a "thorough inquiry" in order to determine that the defendant understands the following: (1) his right to counsel, including appointed counsel, (2) the consequences of the decision to represent himself, and (3) "the nature of the charges and proceedings and the range of permissible punishments." N.C. Gen Stat. § 15A-1242 (1999). Having conducted this colloquy, the court must be satisfied that the defendant's waiver of counsel and election to proceed *pro se* are undertaken knowingly, intelligently, and voluntarily. *See LeGrande*, 346 N.C. at 723, 487 S.E.2d at 729 (citing *State v. Thomas*, 331 N.C. 671, 674, 417 S.E.2d 473, 476 (1992)).

The trial court fully complied with the requirements of N.C.G.S. § 15A-1242 before accepting defendant's waiver of counsel. The record reflects the trial court's painstaking discussion with defendant regarding his decision and the consequences thereof. After hearing defendant's concerns about his counsel, the court asked counsel if he was prepared to represent defendant. Satisfied with counsel's response, the court refused defendant's request for replacement counsel. The court reviewed with defendant the charges and possible punishment he was facing. It then allowed defendant to confer with counsel again before beginning the trial the

following day.

The next morning, the court advised defendant of his right to appointed counsel and his right to self-representation with standby counsel. The court informed defendant of the consequences of representing himself, including defendant's obligation to abide by the rules of court, the limited role played by standby counsel, and the loss of defendant's ability to challenge his conviction based on ineffective assistance of counsel. Defendant was advised of the maximum punishment he was facing. Defendant acknowledged his understanding and stated his intention to waive counsel and represent himself. The trial court then reviewed the waiver of counsel form with defendant. Defendant completed the form and signed it. After advising defendant that he would be better served by retaining his attorney, the trial court asked defendant if he would like to "re-assess [his] situation[.]" Defendant reiterated that he was "demanding" to represent himself. Finally, defendant was required to affirm under oath that he had been informed of the charges against him and his right to counsel but chose to waive counsel and proceed *pro se*. The court then made findings of fact, as follows:

. . . [Defendant] was fully informed in open court of the charges against him and the statutory punishment for each charge and the nature of the proceedings against him and his right to have counsel assigned to him and his right to have the assistance of counsel to represent him here in this action.

This Court finds that he fully comprehends the nature of his charges and fully comprehends the proceedings against him and the range of the punishment involved here

in this case.

This Court fully finds and certifies that [defendant] understands and appreciates the consequences of this decision that he's made and that he voluntarily and he knowingly and he has intelligently elected in open court to be tried in this action without assistance of counsel . . . and that he fully -- wishes and demands to represent himself in this case.

These findings are amply supported by the record and are binding on appeal.

Defendant argues that his decision to discharge his attorney just prior to trial was so irrational as to require the trial court "to make a formal inquiry of psychiatric professionals as to Defendant's then-present capacity to proceed." He notes that his appointed counsel had obtained a pre-trial order committing defendant to Dorothea Dix Hospital for a psychiatric evaluation. Although defendant was found competent to stand trial, he notes the psychiatrist's report diagnosed him with major depressive disorder, as well as "personality disorder not otherwise specified[.]" In light of the psychiatrist's findings, defendant contends the trial court violated his right to due process by allowing him to waive counsel without hearing additional expert opinion.

Generally, a defendant who has been committed to a State hospital by order of the trial court for a determination of his capacity to stand trial is entitled to a hearing on the issue following his release. See N.C. Gen. Stat. § 15A-1002(b) (1999). A defendant waives this right, however, if he does not request a hearing. See *State v. Young*, 291 N.C. 562, 568, 231 S.E.2d 577, 581 (1977). Despite the statutory waiver, a trial court has the

constitutional duty to conduct a competency hearing if confronted with substantial evidence of a defendant's incompetency. See *State v. McRae*, 139 N.C. App. 387, 390, 533 S.E.2d 557, 559 (2000). However,

where . . . the defendant has been committed and examined relevant to his capacity to proceed, and all evidence before the court indicates that he has that capacity, he is not denied due process by the failure of the trial judge to hold a hearing subsequent to the commitment proceedings.

Young, 291 N.C. at 568, 231 S.E.2d at 581.

Having carefully reviewed the transcript and record on appeal, we conclude the trial court did not violate defendant's right to due process by failing to hold a hearing on his capacity to proceed. Neither defendant nor his appointed counsel raised the capacity issue or requested a hearing from the trial court. Nor was the court presented with any evidence of incompetency. The psychiatric report prepared by Dr. Nicole F. Wolfe at Dorothea Dix contained the following findings:

[Defendant] is capable of proceeding to trial. He understands the charges against him[,] his own position relative to the proceedings and is capable of working with an attorney in the preparation of a defense.

. . . [Defendant] does not suffer from a severe mental disease or defect which would prevent him from understanding the difference between right and wrong.

. . .

[Defendant] can be discharged . . . as capable of proceeding to trial. . . .

Dr. Wolfe's report unequivocally states that defendant was

competent to proceed despite his major depressive disorder. She made no recommendation for additional evaluation, nor did she suggest any possibility that his capacity to stand trial was subject to change over time based on his diagnosis.

Similarly, defendant displayed no sign of incapacity in the trial court. Defendant articulated coherent reasons for electing to proceed *pro se*: his belief that counsel was inadequately prepared and his displeasure with counsel's opinion that he would be found guilty. While perhaps ill-advised, his decision did not evince a lack of awareness of the consequences of his actions or an inability to comprehend the nature of the proceedings against him. See N.C. Gen. Stat. § 15A-1001(a) (1999). Moreover, the transcript reflects that defendant represented himself "in a rational [and] reasonable manner" throughout his trial. *Id.* He sought to sequester the State's witnesses. He conducted focused, purposeful cross-examinations, pointing out inconsistencies between the complaining witness' testimony and her statement to police. At sentencing, defendant sought to establish two statutory mitigating factors. Defendant followed the trial court's instructions at every turn, and his exchanges with the trial court were lucid.

Defendant next challenges the denial of his motion to dismiss, arguing that the State failed to adduce sufficient evidence of his intent to kill or of a serious injury to Spears. We find no merit to this claim. Witness testimony established that defendant announced his intention to kill Spears just before he stabbed her in the back with a large knife until the blade broke. Viewed in

the light most favorable to the State, such evidence would allow a reasonable fact finder to conclude defendant acted with a specific intent to kill. See *State v. Musselwhite*, 59 N.C. App. 477, 480, 297 S.E.2d 181, 184 (1982). Similarly, the evidence that Spears received multiple wounds requiring staples and stitches to close, that she bled extensively and suffered great pain, and that she was left with scars and a complete loss of feeling in her little finger adequately supported a jury finding of serious injury. See *id.* at 480-81, 297 S.E.2d at 184; see also *State v. Hunt*, 100 N.C. App. 43, 46-47, 394 S.E.2d 221, 223 (1990).

Defendant also challenges the trial court's jury instruction defining "serious injury" as one that "causes great pain and suffering." However, defendant failed to object to the instruction at trial and has not assigned plain error on appeal. See N.C. R. App. Proc. 10(b)(2) & (c)(4) (1999). Accordingly, he failed to preserve this issue for appellate review. We note that we have previously upheld a jury instruction defining serious injury as "any physical injury that causes great pain and suffering." See *State v. Williams*, 29 N.C. App. 24, 25, 222 S.E.2d 720, 721, *disc. rev. denied*, 289 N.C. 728, 224 S.E.2d 676 (1976).

No error.

Judges GREENE and TYSON concur.

Report per Rule 30(e).