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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1217

Filed: 7 April 2015

STATE OF NORTH CAROLINA

v.

ROBIN NELMS LONG

Graham County

Nos. 11 CRS 50639-42

Appeal by defendant from judgments entered 16 December 2013, 17 February 2014, and 20 February 2014 by Judge Gary Gavenus in Graham County Superior Court. Heard in the Court of Appeals 4 March 2015.

Attorney General Roy Cooper, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Jillian C. Katz, for defendant-appellant.

INMAN, Judge.

Robin Nelms Long ('defendant") appeals from judgments entered after a jury found her guilty of breaking and entering, larceny of a firearm, felony larceny, possession of a stolen firearm, possession of stolen goods, possession of methamphetamine, possession of a schedule IV controlled substance (Alprazolam), and obtaining property by false pretenses. On appeal, defendant argues that the trial

court erred by failing to hold a hearing to determine whether she was competent to stand trial.

After careful review, we conclude that the trial court did not err.

Background

Because defendant does not challenge the evidentiary basis for her conviction of the crimes charged, we need not restate the underlying facts giving rise to those charges. Our factual background and subsequent analysis will focus solely on the issue before us—defendant's competency to stand trial.

This matter came on for trial at the 10 December 2013 Criminal Session of Graham County Superior Court. After jury selection, defense counsel requested that the trial court revoke bond and hold defendant in custody overnight. Defense counsel stated that although defendant "understands what's going on," he was not confident that defendant would be competent to testify the next day if she was allowed to go free for the evening. The trial court granted the request and revoked defendant's bond, noting that he heard "constant rumbling" from defendant throughout jury selection and that defendant had impermissibly asked an individual outside the courtroom whether he had been selected as a juror.

During the trial, defendant's behavior at times prompted admonishment from the judge. Defendant was warned not to stand up in the courtroom, speak out of turn, or speak to other individuals in the audience. The trial court informed defendant that if she stood up once more she would be held in criminal contempt of court, and

that any further interruptions in the proceedings would cause her to lose the right to sit in the courtroom during trial.

Defendant requested that she be allowed to testify, prompting the following colloquy with the trial court:

> THE COURT: Now, Ms. Long, do you understand that you have the right to testify or not to testify at your trial?
>
> THE DEFENDANT: Yes, I do, sir.
>
> THE COURT: And have you discussed the strategic reasons why [you] should or should not testify with your attorney?
>
> THE DEFENDANT: A little bit.

The trial court then advised defendant to discuss the matter with her attorney. After a short recess, the trial court reinitiated its line of inquiry regarding defendant's decision:

> THE COURT: Now, do you understand that you have the right to testify or not testify at your trial?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: And have you discussed the strategic reasons why you should or should not testify with your attorney?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: And what is your decision about whether you will testify in this case?
>
> THE DEFENDANT: I will not testify because I will never tell on no one else in my life again.

THE COURT: So you are – you choose not to testify?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Now, has anyone threatened you to cause you not to testify?

THE DEFENDANT: No, sir.

THE COURT: Has anyone made any promises to you to cause you not to testify?

THE DEFENDANT: Sir, it's my past in law enforcement years ago. If I go to prison they'll be likely that I will be killed by an inmate or an officer.

THE COURT: All right. Let me – let me – I'm going to –

THE DEFENDANT: I don't want it.

THE COURT: – ask the question one more time. Has anyone made any promises to cause you not to testify in this case?

THE DEFENDANT: No, sir.

THE COURT: Is your decision not to testify made freely, voluntarily and knowingly?

THE DEFENDANT: It's made by solely me. I will not tell on no one.

THE COURT: Do you have any questions about your right to testify or not testify or anything related to that right?

THE DEFENDANT: That's right. I will not testify.

THE COURT: All right. I'm going to need you to listen to the question that I'm asking you.

> THE DEFENDANT: Okay.
>
> THE COURT: Do you have any questions about your right to testify or not testify or anything related to that right?
>
> THE DEFENDANT: The only thing I have to ask if I – if it has to come to it, can I give my closing argument?
>
> THE COURT: We'll address that when that time comes.
>
> THE DEFENDANT: Okay.
>
> THE COURT: You'll need to talk to your attorney about that.
>
> THE DEFENDANT: Okay.
>
> THE COURT: All right. Let the record reflect that I have had this conversation with the defendant in open court with her attorney present outside the presence of the jury, and the defendant has decided that she will not testify in this case.

At the close of evidence, the trial court informed defendant of the rights implicated by the decision to deliver closing arguments. He first advised defendant that to do so would require her to waive the right to counsel, and that she would be held to the same standard as an attorney in delivering her remarks; defendant indicated that she understood by saying "yes, sir." The trial court then reviewed the charges and their potential maximum punishments with defendant, to which defendant replied, "they're bad. I know, sir. Real bad." Defendant requested and was allowed to take the weekend to consider her decision to give closing arguments.

Before being released for the weekend, defense counsel informed the trial court that defendant had a panic attack earlier in the week and that she claimed to suffer from post-traumatic stress disorder ("PTSD"). Counsel for the State informed the trial court that the local jail had "excellent medical care" with a nurse and doctor on call. The trial court denied defendant's motion to modify bond.

When defendant returned to court the following Monday, she allowed her attorney to deliver closing arguments. Defendant was convicted on all charges and provided notice of appeal in open court.

Discussion

Defendant's sole argument on appeal is that the trial court erred by failing to conduct a hearing to determine whether defendant was competent to stand trial. We disagree.

Under N.C. Gen. Stat. § 15A-1001(a) (2013):

> No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

The question of capacity may be raised at any time by motion of the prosecutor, the defendant or defense counsel, or the trial court. N.C. Gen. Stat. § 15A–1002(a) (2013). Once a defendant's capacity to stand trial is questioned, the trial court must hold a hearing to determine the defendant's capacity to proceed. N.C. Gen. Stat. § 15A–

1002(b) (2013).[1] Even where no challenge to a defendant's competency is raised, the trial court has a constitutional duty to hold a competency hearing *sua sponte* if there is "*substantial evidence before the trial court* indicating that the accused may be mentally incompetent." *State v. Young*, 291 N.C. 562, 568, 231 S.E.2d 577, 581 (1977) (quotation marks omitted). "In other words, a trial judge is required to hold a competency hearing when there is a *bona fide* doubt as to the defendant's competency even absent a request." *State v. Staten*, 172 N.C. App. 673, 678, 616 S.E.2d 650, 654-55 (2005). " 'Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant' to a *bona fide* doubt inquiry." *State v. McRae*, 139 N.C. App. 387, 390, 533 S.E.2d 557, 559 (2000) (quoting *Drope v. Missouri*, 420 U.S. 162, 180, 43 L. Ed. 2d 103, 118 (1975)).

Here, defendant argues that the trial court was required to hold a competency hearing *sua sponte* because: (1) defense counsel called defendant's competency into question after jury selection, and (2) defendant's erratic behavior raised a *bona fide* doubt as to her competency. We are unpersuaded.

First, defense counsel did not question defendant's competency to stand trial in general. He requested that the trial judge order defendant to be held in custody

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[1] However, "this Court has recognized that the trial court is only required to hold a hearing to determine the defendant's capacity to proceed *if* the question is raised." *State v. Badgett*, 361 N.C. 234, 259, 644 S.E.2d 206, 221 (2007) (internal quotation marks omitted). "Therefore, the statutory right to a competency hearing is waived by the failure to assert that right at trial." *Id.* Because neither defendant nor defense counsel requested that the trial court assess defendant's competency, defendant's statutory right to a competency hearing was waived.

overnight before trial so that she would be competent the following day. In his request, he specifically noted that defendant "understands what's going on." The trial court granted defense counsel's request and revoked defendant's bond, thus alleviating whatever concern defense counsel may have had should defendant have been released on the evening before trial. Defense counsel never again questioned his client's competency during the trial.

Additionally, we do not believe that defendant's behavior at trial raised a *bona fide* doubt as to her competency. Although defendant was warned that her disruptions of the proceedings may result in a charge of criminal contempt or her removal from the courtroom, defendant responded to the warnings by apologizing and ultimately heeded the trial court's warnings. Defendant was neither removed from the courtroom nor charged with criminal contempt for her disruptive behavior. Defendant did assert that she suffered from PTSD and had a panic attack earlier in the week, but these medical issues were raised in the context of a request to modify her bond, not in a motion to determine her competency to stand trial.

More importantly, defendant's conversations with the trial court revealed that she could respond to questions in a clear and logical way, assist her counsel with her defense, and understand the nature of the proceedings against her. *See Badgett*, 361 N.C. at 260, 644 S.E.2d at 221 (noting that where the defendant "demonstrated a strong understanding of the proceedings against him, and consistently addressed the trial court with appropriate deference and intelligent responses," there was no

substantial evidence requiring the trial court to hold a competency hearing *sua sponte*). Defendant specifically informed the judge that she understood her constitutional right to testify or not testify, had consulted with her attorney about the decision, was not compelled by any third parties, and chose not to testify because she did not want to make incriminating statements against other individuals. At that time she also asked the trial court whether she would be allowed to deliver her closing arguments, indicating an understanding of the trial process. At the close of evidence, defendant told the trial court that she understood the implication of her waiver of the right to counsel should she decide to deliver her closing argument, and also acknowledged the severity of the crimes charged by noting that the maximum punishments were "bad . . . [r]eal bad." Defendant further demonstrated competent and logical thinking by requesting that she be allowed the weekend to weigh the decision to deliver closing arguments. Finally, by considering her options and allowing her attorney to deliver closing arguments, defendant demonstrated a willingness to allow counsel to assist in her defense.

Based on the foregoing, we cannot conclude that there was substantial evidence of defendant's being "unable to understand the nature and object of the proceedings against [her], to comprehend [her] own situation in reference to the proceedings, or to assist in [her] defense in a rational or reasonable manner." N.C. Gen. Stat. § 15A-1001. Therefore, because there was no *bona fide* doubt as to defendant's competency, the trial court did not err by declining to hold a competency

hearing *sua sponte*. *See Staten*, 172 N.C. App. at 678, 616 S.E.2d at 654-55. Given this disposition, we need not address the State's alternative contention that the trial court's inquiry regarding defendant's decision not to testify amounted to a "competency hearing" sufficient to meet the requirements of section 15A-1002(b).

Conclusion

Because there was no substantial evidence that defendant lacked competency to stand trial, the trial court did not err by declining to hold a competency hearing *sua sponte*.

NO ERROR.

Judges ELMORE and GEER concur.

Report per Rule 30(e).