In The
Court of Appeals
Seventh District of Texas at Amarillo

Nos. 07-16-00400-CR
07-16-00401-CR

STEPHEN SALVADORE OCHOA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 251st District Court
Potter County, Texas
Trial Court No. 69,818-C, Honorable Ana Estevez, Presiding

March 12, 2018

MEMORANDUM OPINION

Before QUINN, CJ., and CAMPBELL and PARKER, JJ.

Stephen Salvadore Ochoa (appellant) appeals his convictions for (1) possession of a controlled substance within a drug-free zone and (2) unlawfully possessing a firearm. His sole issue on appeal relates to the trial court's purported failure to conduct a *sua sponte* informal inquiry into his competency. We affirm.

Background

Before trial, appellant opted to represent himself. The trial court conducted a *Faretta* hearing on the request and admonished him about dangers and disadvantages

of proceeding on his own behalf.[1] So too did it inquire into his competence as shown by the following:

> THE COURT: Have you ever been declared incompetent by any court or jury?
>
> THE DEFENDANT: No.
>
> THE COURT: Do you make any claim now that you are incompetent to conduct your own trial?
>
> THE DEFENDANT: I am not incompetent.
>
> THE COURT: Have you ever been found to be insane by any court or jury?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: Do you make any claim now that you are insane; and, thus, incapable of handling your own trial?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: Do you make any claim that you are subject to fits of temporary insanity which would interfere with your ability to handle your own trial?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: Do you feel at the present time that you have the mental capacity to freely and voluntarily waive the right to counsel in this trial?
>
> THE DEFENDANT: Yes, I do.

Appellant gave no indication during the hearing that he was incompetent. He answered questions promptly and responsively and made cogent and lucid statements regarding his desire to act *pro se*. So too did he explain his educational background, his experience with the civil and criminal justice systems, his effort to learn about the

[1] *See Faretta v. California*, 422 U.S. 806, 835–36, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) (holding that a criminal defendant has a constitutional right to conduct his own defense at trial, but the record must reflect a knowing and intelligent election to proceed without counsel).

applicable law, and his belief that he could represent himself better than anyone else at the time. He even invoked his right against self-incrimination when he thought his responses to the trial court's questions may adversely affect him. In short, he illustrated intelligence and coherence throughout that hearing. Ultimately, the trial court acceded to his request but appointed him stand-by legal counsel nonetheless.

When the matter was called for trial several weeks later, the trial court conducted a pretrial hearing on what it described as "Defendant's Motion to Quash the Jurisdiction of the Court." At that proceeding, appellant urged motions and used terms that were inapplicable to a criminal proceeding. For instance, he (1) filed several documents with irrelevant titles and in which his legal remedy was unclear; (2) maintained that he was "here as a special appearance . . . on the Stephen Salvador Ochoa matter"; (3) identified himself as the "executor, the beneficiary, you know of his trust estate"; (4) explained that this was about "trust bonds"; and (5) declared that the prosecutor was the executor while the trial court was the trustee on the "trust." The trial court responded to his arguments by saying that it had "no idea what you are talking about," explained that it was not the trustee of any trust, and tried to redirect appellant to the pending charges. Appellant also maintained that the trial court somehow lacked jurisdiction over the proceeding and that he was "not a collective entity, nor [had] . . . been part of a collective entity." After his further declaration that he was "objecting to everything [the trial court] is doing," the court recessed until the following morning.

When the proceeding resumed, appellant continued to raise matters relating to the trial judge and prosecutor being "fiduciaries of the trust" based on their roles as public servants. He also grew concerned about whether the proceeding involved admiralty law

or implicated a military tribunal, which he opined were the "only two types" of jurisdiction. Viewing these as requests to dismiss the prosecution for want of jurisdiction, the trial court denied them and proceeded with jury selection.

During voir dire, appellant questioned venire members on their thoughts concerning actual ownership and use of deadly weapons, the prevalence of drug-free zones, and the rehabilitation of drug dealers. These topics were relevant to the prosecution he was undergoing and unrelated to prior comments about trusts, fiduciaries, and the jurisdictional issues raised earlier. Though rambling now and then as he presented hypothetical scenarios, he nonetheless managed to examine and engage prospective jurors on matters related to the prosecution.

When trial commenced appellant announced ready and stated that he was present "on special appearance of him." Yet, during his opening statement to the jury, he advanced a theory that the officers planted narcotics in his house, questioned the credibility of the assessment that he was a drug dealer, and challenged the police department's use of a confidential informant who was a convicted felon and, therefore, untrustworthy in his view.

He also lodged various objections throughout trial, many of which were general in nature while some were specific. For instance, he objected to the admissibility of the search warrant on the basis that it relied on information by an undisclosed confidential informant. He also took a police officer on voir dire to question him about his training and credentials.

Eventually, appellant again broached the matter of the trial court's jurisdiction and its status as a fiduciary. When that occurred, the trial court excused the jury, explained

the procedure of admitting evidence and objecting to its admission, reminded appellant of stand-by counsel, and again questioned appellant on his decision to proceed *pro se*. To the latter inquiry, appellant reiterated his stance about continuing as his own attorney. Furthermore, he began to confer with stand-by counsel more frequently.

During his closing argument, appellant again challenged the confidential informant's credibility and the State's failure to call the informant to testify. The sufficiency of the evidence to show that he possessed drugs was also addressed by him. He also disputed the credibility of the investigators and attempted to undermine the State's evidence that he committed any offense with a deadly weapon.

At the conclusion of the guilt innocence phase, the jury found him guilty of the charges mentioned earlier. Thereafter, a bench trial on punishment began. Before it did though, appellant requested leave to address the court. Given leave to do so he said the following:

> First of all, Your Honor, I need to speak. I need everyone's name, position, and what they have to do with this court, with this case.
>
> And, first of all, are you speaking to the debtor or secured party creditor, Your Honor? Here are the documents stating that and it is also in the federal courthouse standings. Okay?
>
> First of all, I am the third party intervenor in this matter, in this property. Right? The name of the charging instrument that the Court is using is all capped name. I have stated you are the fiduciary trustee, so is the D.A., of the all capped name.
>
> * * *
>
> I am accepting all charges for value. What does it mean? It is the fiduciary trustee person that y'all have made, the government has made; and that charge back of the utility transmitting utility for financial.
>
> This is a record of my birth certificate. All funds, acceptance for value.

> Now here I am, Your Honor. I am the holder of due process, because you are in dishonor, Your Honor. You have violated my rights; you have violated due process; and you have violated the color of law.
>
> I state right here: These are federal charges. I am in federal jurisdiction. The State does not have jurisdiction over me, Your Honor.
>
> * * *
>
> Everything I have here, all my standings – my UCC-1 to be a secured party creditor – are down in standings.
>
> So, I mean, I want a new trial, Your Honor, in federal jurisdiction, because the State does not have jurisdiction over me at all. All my federal paperwork is there and it is file in the federal courthouse. They have got it down from the county clerk's office. Everything is in findings.
>
> So, as of that I am dismissing this case – all fines, all charges, all claims, everything against me.
>
> * * *
>
> I am going to use your oath of office to use as a charge back instrument, because you have misapplied your statutes.

The trial court treated these statements as an attack upon its jurisdiction and a motion for new trial, both of which it denied. Appellant then refused to enter pleas to the enhancement paragraphs and, when the trial court announced that it would do so on his behalf, appellant objected and, this time, became rather disruptive and was removed from the courtroom. The trial court allowed him to return after regaining his composure. This resulted in appellant reurging his fiduciary/trust issue as a challenge to the jurisdiction of the trial court and also apologizing to the trial court for "getting a little crazy earlier." The trial court acknowledged his objections, overruled them, and ultimately pronounced sentenced.

Issue

Before us, appellant asserts that the trial court abused its discretion in failing to conduct a *sua sponte* informal competency inquiry under article 46B.004(c) of the Texas Code of Criminal Procedure. Allegedly, his actions exhibited "truly bizarre behavior" that warranted such an inquiry. We disagree.

Due process prohibits the conviction of a mentally incompetent person. *See Turner v. State*, 422 S.W.3d 676, 688 (Tex. Crim. App. 2013). Furthermore, a person is incompetent to stand trial if he lacks a (1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding or (2) a rational and factual understanding of the proceedings against him. TEX. CODE CRIM. PROC. ANN. art. 46B.003(a) (West 2006); *McDaniel v. State*, 98 S.W.3d 704, 709–10 (Tex. Crim. App. 2003). However, we must remember that a defendant is presumed competent until shown otherwise through a preponderance of the evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 46B.003(b).

Next, the competency of a defendant may be raised in two ways. Either party may file a motion broaching the matter. *See id.* art. 46B.004(a) (West Supp. 2017). Or, the trial court must do so, *sua sponte*, if evidence suggesting incompetency comes to its attention. *See id.* art. 46B.004(b). If either happens then the trial court must undertake an informal inquiry to determine whether some evidence from any source supports a finding of incompetency. *See id.* art. 46B.004(c). However, an informal inquiry is not required unless the trial court observes or is presented with sufficient evidence suggesting incompetency. *See id.* art. 46B.004(c-1).

Again, appellant characterizes his repeated diatribes about trusts, admiralty jurisdiction, military jurisdiction, the Uniform Commercial Code, fiduciaries, and the like as evidence of bizarre conduct sufficient to trigger the trial court's duty to hold an informal inquiry. Yet, merely calling acts "bizarre" does not mean that they fall into the category the Court of Criminal Appeals mentioned in *McDaniel*. Indeed, our sister jurisdictions have encountered activity akin to that exhibited by appellant here and refused to consider it sufficient to require an informal inquiry into his competency.

For instance, in *Guerrero v. State*, the defendant mentioned or wrote things about (1) "'Accepted for value"; (2) "I did not find your check herewith"; (3) "This property exempt from Levy . . . Conditional upon proof of claim that the fiduciary holder of my account did not commit a defalcation by dishonoring the bill negotiated back to the drawer/offeror for the adjustment and set off, or settlement of the account"; and (4) tracing modern corporate law back to Roman law, the Magna Carta of 1215, and the Uniform Commercial Code. *See Guerrero v. State*, 271 S.W.3d 309, 314–15 (Tex. App.—San Antonio 2008), *rev'd in part on other grounds and otherwise aff'd*, 305 S.W.3d 546 (Tex. Crim. App. 2009). While doing such may have been odd and misguided, it was insufficient to trigger the informal inquiry, according to the court. In arriving at its decision, the intermediate appellate court noted that the defendant's competency had already been assessed twice via *Faretta* hearings held due to his request to represent himself. *Id.* at 312. Those hearings revealed a lack of evidence suggesting incompetency. *Id* at 313. Incidentally, Guerrero, like appellant here, was being tried for possessing a controlled substance. *Id.* at 310. And, while his use of contract or business principles to defend himself "may have been unusual, misguided, and legally incorrect, [they] did not suggest that he lacked a rational

understanding of the proceedings." *Id.* at 316. Instead, the reviewing court observed that his "contract-law-based defense showed a logical, not a confused, thought process which was applied consistently to every facet of the trial proceedings." *Id.* at 315. "The mere fact that it was an incorrect legal defense [did] not amount to 'some evidence' that [he] lacked a rational or factual understanding of the proceedings." *Id*.

Similarly, in *Lewis v. State*, the defendant also was being tried for possessing a controlled substance and also sought to represent himself. He also said things about (1) the existence of a contract between the prosecutor as "offeror" and himself as the "offeree," (2) his being a sovereign citizen in the Republic of Texas, (3) the application of the Uniform Commercial Code and "Maritime Claims Rule," (4) the absence of subject-matter jurisdiction due to some Uniform Commercial Code concept, and (5) his being the "Paramount Security Interest Holder of All Property Collateral Belonging to the Defendant." *Lewis v. State*, 532 S.W.3d 423, 426–28 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd). It appears that Lewis also became so confrontational and obstructive that he had to be removed from the courtroom, at times. *See id.* at 428. Despite these circumstances, the reviewing court held that the trial court did not abuse its discretion in foregoing a *sua sponte* informal hearing on Lewis' competency. *See id.* at 433. In its view, the trial court "could reasonably have concluded that appellant's refusal to cooperate at trial was not fueled by a lack of rational understanding, but rather a desire to obstruct the trial proceeding." *Id.* Additionally, "[t]he record indicate[d] that appellant understood the nature of the proceeding and was capable of consulting with his appointed attorney to a rational degree of understanding. He simply chose not to do so." *Id.*

Here, as in *Guerrero* and *Lewis*, appellant underwent an initial competency examination due to his request to represent himself. The trial court inquired into his mental competency during that proceeding, encountered evidence indicative of competency, and found him capable of representing himself. As previously mentioned, the record of that proceeding illustrated appellant to be quite lucid and sensical despite wanting to represent himself.

The appellate record at bar also contained evidence of appellant engaging with his stand-by counsel periodically, posing relevant questions during voir dire of the jury panel, raising objections to the State's voir dire some of which were sustained, moving for a continuance because he needed more time to review documents belatedly released to him by the State, attacking the State's evidence on grounds relevant to the pending charges, attacking the credibility of the State's witnesses, attempting to undermine evidence pertaining to his possessing the controlled substances and firearm at issue, and lodging objections to the State's evidence based on the reliability of the confidential informant. No doubt his attempt to defend himself through allusions to the Uniform Commercial Code, contract law, trust law, fiduciary law, maritime law, and the like were misguided and irrelevant, just as in *Guerrero* and *Lewis*. But, his allusions to those legal theories also showed a rather consistent thought process followed throughout the proceeding, as in *Guerrero*. It showed rationality (though founded on an inapplicable body of law) coupled with obstructionism. Appellant had a rational understanding of what was occurring and the capability to interact with counsel. So, we join the *Guerrero* and *Lewis* courts in concluding that the conduct appellant exhibited was not sufficient to obligate the trial court to informally inquire into his competency. What it may indicate,

though, is that appellant should have studied the law under a qualified instructor rather than the one encountered by Lewis and Guerrero, given the similarity of their arguments. But, then again, without imagination, justice and life would grow stale.

Based on the record before us, we conclude that the trial court did not abuse its discretion by failing to conduct a *sua sponte* informal inquiry into appellant's competency beyond that made during the *Faretta* hearing held at bar. Appellant's issue is overruled, and the trial court's judgments are affirmed.

Per Curiam

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