NUMBER 13-16-00238-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ROY HOOT GIBSON, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 36th District Court of San Patricio County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa

Appellant Roy Hoot Gibson appeals a conviction, based upon a plea agreement, for burglary of a habitation, a second degree felony. *See* TEX. PENAL CODE ANN. § 30.02 (West, Westlaw through Ch. 49, 2017 R.S.). In one issue, Gibson contends that he was mentally incompetent when he pleaded guilty, and therefore, the trial court abused its

discretion in finding otherwise when it denied his motion for new trial. We affirm.

I. BACKGROUND[1]

On January 23, 2015 Gibson, according to an indictment, entered a habitation and attempted to commit or committed theft of the homeowner's tools and electronic devices. Before trial, Gibson and the State announced that they had reached a plea bargain. In exchange for Gibson's plea of guilty, the State would recommend six years' confinement.

On March 14, 2016, Gibson executed a "Stipulation and Judicial Confession," which stated:

> I, ROY HOOT GIBSON, on or about the 23rd day of January, A.D. 2015, in the County and State aforesaid, did then and there intentionally or knowingly enter a habitation, without the effective consent of Cynthia Torres, the owner thereof, and attempted to commit or committed theft of property, to-wit: tools and electronic devices, owned by the said Cynthia Torres.

The stipulation was signed by Gibson and witnessed by a deputy district clerk. Gibson also signed a "Statement of Defendant," which stated, in part, "I am mentally competent to enter a plea of guilty in this case; I am sane now and I know what I am doing in court today. I was sane and I knew what I was doing on the date the offense was committed."

Also on March 14, 2016, the trial court orally admonished Gibson and accepted his guilty plea. During that hearing, Gibson stated that at the time of his plea hearing he was not under the influence of any drugs or alcohol but that in the past six months he had taken "Prozac, Depakote, and Trizone." Mental health professionals at a MHMR facility in Denton County, Texas prescribed these medications to Gibson. Gibson did not bring

[1] Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. *See* TEX. R. APP. P. 47.4.

those medications when he apparently relocated to San Patricio County. Although Gibson reached out to a local MHMR facility, "they hadn't followed up on anything yet." The trial court then stated:

> COURT: Ok. I know that those medicines that you were taking are what we call psychotropic medicines; do you feel that you have to have those medicines to make a good decision about your case today?
>
> GIBSON: No, sir.
>
> COURT: Do you think you can make a good decision about your case today?
>
> GIBSON: Yes, sir.
>
> COURT: [Gibson's counsel], are you satisfied that your client is competent today here?
>
> GIBSON'S COUNSEL: I'm satisfied, Judge. We've had these conversations and this case has gone on for a while because he was initially arrested back last year and I've seen him throughout the intervening months and had phone calls with him and letters and I believe he's competent and understands the nature of the case and he's been able to assist me in his defense.
>
> COURT: Well, you appear to be competent to me, Mr. Gibson. The answers to my questions you've given me have been pretty clear answers but I want you to understand that if you've got questions that I can answer, I'll answer them. If you need to talk to [Gibson's counsel], I'll let you do that as well; do you understand?
>
> GIBSON: Yes, sir.

Thereafter, the trial court orally accepted Gibson's guilty plea and pronounced a judgment of conviction for burglary of a habitation, a second-degree felony, and sentenced Gibson to six-years' confinement. *See* TEX. PENAL CODE ANN. § 30.02.

On April 4, 2016, Gibson, through his trial counsel, filed a motion for new trial. In his motion, Gibson asserted that "he plead guilty under duress suffering from mental health issues making his plea involuntary." At a hearing on Gibson's motion for new trial, he testified that he has "mental issues" and that he "hear[s] voices and feel[s] conspiracies against" him. Gibson testified that had been diagnosed as "[t]oxic psychotic, paranoid schizophrenic and bipolar." Gibson pleaded guilty "[o]ut of fear," but he could not specify what he was afraid of. He further testified that Risperdal, Depakote, and Trazadone, the medications he had not taken for three months, helped him make better or good decisions. The trial court disagreed with Gibson's assessment of his mental status, stating:

> COURT: And your position—your client's position or your position in the case, [Gibson's counsel], is that his plea was involuntary?
>
> GIBSON'S COUNSEL: Yes, Your Honor, because he lacked capacity to understand exactly what it was he was doing, involuntary because of incompetent.
>
> COURT: But you haven't requested that he be—I mean, he clearly remembers what happened the day we had the hearing, I remember what happened the day we had the hearing, I remember my discussions with him.
>
> GIBSON'S COUNSEL: I would make a request that he be evaluated for competency, and perhaps that would help the Court's decision.
>
> COURT: I don't think anybody can read this record, [Gibson's counsel], and not believe that your client is competent today. The question is was his plea involuntary, and I'm not going to make a finding today that he was incompetent. I may make a finding that his plea was somehow involuntary because of his mental condition, but not because he is incompetent. And if your client

> really wants to withdraw his plea on an enhanced 2nd degree felony as a two-time prior-convicted felon facing a habitual offender, I'm not real sure when I get over to asking [the prosecutor] how he feels about it he might say, *Do us a favor, Judge, and let him withdraw that plea*.

(Emphasis in original). The trial court orally denied Gibson's motion for new trial. By written order, the trial court found that (1) Gibson was competent when he entered his plea, (2) Gibson was competent at his hearing on the motion to withdraw his guilty plea, and (3) Gibson's guilty plea was voluntary. This appeal followed.

II. DISCUSSION

A. Standard of Review

We review a trial court's ruling on a motion for new trial under an abuse of discretion standard, reversing "only if the trial judge's opinion was clearly erroneous and arbitrary." *Riley v. State*, 378 S.W.3d 453, 457 (Tex. Crim. App. 2012); *see Hawkins v. State*, 135 S.W.3d 72, 76–77 (Tex. Crim. App. 2004). We are mindful of the fact that the trial court is the sole arbiter of the credibility of the witnesses and of the evidence offered. *Charles v. State*, 146 S.W.3d 204, 208 (Tex. Crim. App. 2004), *superseded by rule on other grounds as stated by State v. Herndon*, 215 S.W.3d 901 (Tex. Crim. App. 2007). Thus, we will not substitute our judgment for that of the trial court, but instead, will review the evidence in the light most favorable to the ruling to determine if the trial court abused its discretion. *Riley*, 378 S.W.3d at 457; *see Wead v. State*, 129 S.W.3d 126, 129 (Tex. Crim. App. 2004) (providing that under abuse of discretion standard appellate court must uphold trial court's ruling if within the zone of reasonable disagreement).

If there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *Riley*, 378 S.W.3d at 456–58. A trial court abuses its discretion in denying a motion for new trial only when no reasonable view of the record could support its ruling. *Id*.; *Webb v. State*, 232 S.W.3d 109, 112 (Tex. Crim. App. 2007).

B. Applicable Law

Under the Texas Code of Criminal Procedure, "[a] person is incompetent to stand trial if the person does not have: (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against the person." TEX. CODE CRIM. PROC. ANN. art. 46B.003(a) (West, Westlaw through Ch. 49, 2017 R.S.). A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence. *Id*. art. 46B.003(b) (West, Westlaw through Ch. 49, 2017 R.S.). The law on competency applies, in addition to an actual trial on the merits, to plea bargaining—in other words, a defendant's decision regarding a plea bargain offer is not voluntary, knowing, and intelligent unless he is legally competent. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(b) (West, Westlaw through Ch. 49, 2017 R.S.) ("No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary."); *see also Edwards v. State*, 993 S.W.2d 171, 175 (Tex. App.—El Paso 1999, pet. ref'd) (addressing appellant's contention that his guilty plea was involuntary, in part, as an issue of competency).

C. Analysis

In his sole issue, Gibson asserts that the trial court erred in denying his motion for new trial due to his incompetency at the time of his plea. Specifically, Gibson points to his testimony of "his mental health issues and to the fact that he had not received his proper medications for over three months while in custody." He argues that "the facts of this case create a bona fide doubt as to [his] competency."

Gibson's reference to a "bona fide doubt" standard is reminiscent of language in article 46B.004 of the Texas Code of Criminal Procedure, wherein the legislature prescribed:

> A *suggestion* of incompetency is the threshold requirement for an informal inquiry under Subsection (c) and may consist solely of a representation from any credible source that the defendant may be incompetent. A further evidentiary showing is not required to initiate the inquiry, and the court is not required to have a *bona fide doubt* about the competency of the defendant.

TEX. CODE CRIM. PROC. ANN. art 46B.004(c-1) (West, Westlaw through Ch. 49, 2017 R.S.) (emphasis added). In *Turner v. State*, 422 S.W.3d 676, 691–92 (Tex. Crim. App. 2013), the Texas Court of Criminal Appeals recognized that the current statutory scheme focused on a "suggestion of incompetency" rather than a "bona fide doubt." Regardless of which standard should have been employed—suggestion of incompetency or bona fide doubt—Gibson has received what his argument seeks: an informal inquiry into his competency. In this case, the trial court held an evidentiary hearing on Gibson's motion for new trial, at which only Gibson testified.[2]

[2] We note that when determining whether there is a suggestion of incompetency, we do not typically consider evidence brought to the trial court's attention for the first time after sentencing. *See Rodriguez v. State*, 329 S.W.3d 74, 78 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (providing scope of

Reviewing the evidence that was before the trial court at the plea hearing, *see Rodriguez v. State*, 329 S.W.3d 74, 78 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (providing that we consider only the evidence actually known by the trial court up until the point of sentencing), we cannot say that the trial court abused its discretion in denying Gibson's motion for new trial. At the plea hearing, the trial court questioned Gibson and his counsel and observed Gibson's demeanor. The trial court noted that Gibson appeared to be competent, and it observed that "the answers to [the trial court's questions] . . . have been pretty clear answers." From the trial court's statements at the plea hearing, it determined that Gibson had (1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, or (2) a rational as well as factual understanding of the proceedings against him. *See* TEX. CODE CRIM. PROC. ANN. art. 46B.003(a).

Even if we broadened our review and looked to Gibson's testimony at the hearing on his motion for new trial, *but see Rodriguez*, 329 S.W.3d at 78, we still cannot say that the trial court abused its discretion. The fact that a defendant is mentally ill does not by itself mean he is incompetent. *Turner*, 422 S.W.3d at 691. The trial court, as the arbiter of Gibson's credibility, was free to disbelieve Gibson's assertion that a lack of medication rendered him incompetent at the time he pleaded guilty. *See Salazar v. State*, 38 S.W.3d 141, 148 (Tex. Crim. App. 2001) (providing that a trial court does not abuse its discretion in overruling motion for new trial "where there is conflicting evidence on an

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review under the bona fide doubt standard). Instead, we consider only the evidence actually known by the trial court up until the point of sentencing. *Id*. Accordingly, Gibson was arguably not entitled to the post-conviction inquiry that he received. *See id*.

issue of fact"); *Shanklin v. State*, 190 S.W.3d 154,166–67 (Tex. App.—Houston [1st Dist.] 2005), *pet. dism'd*, *improvidently granted*, 211 S.W.3d 315 (Tex. Crim. App. 2007) ("The court may consider the interest and bias of any witness and is not required to accept as true the testimony of the accused or any defense witness simply because it was uncontradicted."); *see also O'Neal v. State*, No. 03-12-00182-CV, 2013 WL 3723198, at *10 (Tex. App.—Austin Jul. 10, 2013, no pet.) (mem. op., not designated for publication) (finding no abuse of discretion in denying motion for new trial where defendant contended that his guilty plea was involuntary because, among other things, he was influenced by the medication he was taking and he pleaded guilty out of fear of retaliation by the mafia).

Gibson's sole issue is overruled.

III. CONCLUSION

We affirm the judgment of the trial court.

LETICIA HINOJOSA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
17th day of August, 2017.