

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 65277-0-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
THOMAS STEVEN BAZE)	
a/k/a THOMAS S. BAZE,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: September 26, 2011
)	

Lau, J. — Thomas Baze appeals his conviction for two counts of felony violation of a no-contact order and one count of making a false or misleading statement to a public servant, a gross misdemeanor. He contends that the trial court erroneously failed to conduct a competency hearing. In the alternative, he claims that the jury instructions on the misdemeanor count relieved the State of its burden to prove the essential elements of the charge. Because the trial court had no reason to doubt Baze’s competency and because any error in the jury instruction was harmless, we affirm. We also reject the claims Baze raises in his statement of additional grounds for review.

FACTS

The State charged Baze with two violations of a court order prohibiting him from contacting his wife, Georgeann Bayne. On both occasions, police officers who were familiar with Baze and Bayne confronted the two while they were together on the street. On one occasion, Baze provided the officer with a false name, which he admitted was false after the officer showed him a picture associated with his true name.

On March 1, 2010, the first day of trial, the court granted Baze's request to represent himself and appointed standby counsel. Shortly after the court began to address pretrial motions, standby counsel advised the court that Baze had not yet received his medication, which he takes daily at 10 a.m., and that he thought "Mr. Baze is getting a little unwell." Verbatim Report of Proceedings (VRP) (Mar. 1, 2010) at 27. Baze complained that he needed his reading glasses and that he was "in pretty poor health at the moment." VRP (Mar. 1, 2010) at 27. The court recessed for Baze to get his medication and his reading glasses. After the recess, Baze confirmed that he had taken his medication and obtained his glasses. The court completed pretrial hearings and jury selection and recessed for the day.

On the second day of trial, Baze again complained that he had not received his medication. Based on an understanding that Baze's medication would be brought from the jail, the trial court allowed the State to proceed with its case "until we take that call." VRP (Mar. 2, 2010) at 76. The State rested before noon. Baze indicated that he wanted to testify but asked for a sidebar. Outside the presence of the jury, Baze stated:

I don't know what's going on, as far as my medication goes. It's usually here long before now. But I'm used to taking it early in the morning. And as time

wears on, my mind doesn't – isn't as clear as what it normally would be or should be. And I'm starting to feel kind of adverse effects from the, um, of not having my medication as yet.

VRP (Mar. 2, 2010) at 117. The trial court recessed until 1 p.m.

When the court reconvened, Baze further explained that he was on a high dose of methadone administered by a local clinic and that he was “kind of starting first stages of withdrawals” and “afraid to get up there with my eyes not focusing or my nose running and not thinking straight.” VRP (Mar. 2, 2010) at 118. The court asked the bailiff to contact the jail regarding the medication and asked whether Baze could make it until mid-afternoon break. Baze agreed. However, shortly thereafter, Baze began complaining that he was “not feeling real well at the moment,” and “just not thinking straight at the moment.” VRP (Mar. 2, 2010) at 121, 123.

After a short recess, the court indicated that it had learned that Baze received methadone from a private clinic and advised the parties that the court clerk was attempting to contact the clinic. The court recessed to determine whether the clinic would deliver the methadone. Upon reconvening at 2 p.m., the court reported that the clinic indicated that missing one day would not interfere with mental faculties and confirmed that Baze's dose would be administered the next day before court began. The court requested any response from the parties. Baze argued that he may not die if he missed a day but that he would experience “withdrawals” and would not “be feeling up to snuff” and would not be “thinking clearly.” VRP (Mar. 2, 2010) at 127. He claimed the “body metabolizes that medication at a quicker rate” when under stress and that he didn't “want to be feeling like I'm going back to running to the bathroom with

diarrhea or have my nose running or my eyes flickering and not thinking as clearly as I should.” VRP (Mar. 2, 2010) at 127.

The court ordered Baze to proceed with his case but indicated that he would not be required to rest until the next day. In addition to testifying about the facts leading to the charges, Baze informed the jury that he hadn’t received his medication, that he was proceeding against his will, that he was having trouble reading because his reading glasses were stolen, and that he was having trouble “speaking . . . intelligently and having a normal train of thought.” VRP (Mar. 2, 2010) at 138. During cross-examination, Baze began to complain that it was “unfair” for the prosecutor “to be drilling me at this moment when I am not able to think clearly or see clearly.” VRP (Mar. 2, 2010) at 146. After complaining about the prosecutor, the violation of his rights, and the fact that he was “forced” to testify when he wasn’t “feeling well,” Baze finally stated, “I am not answering another thing. I’ll take the Fifth.” VRP (Mar. 2, 2010) at 147. The court struck Baze’s testimony.

Outside the presence of the jury, the court reviewed the proposed jury instructions. Baze complained that he could not read without his glasses and that it was “a miscarriage of justice” to make him continue without his methadone. The trial court stated, “My experience, Mr. Baze, is that you’re working very diligently to try to find a way to avoid the end of this trial.” VRP (Mar. 2, 2010) at 151. When Baze claimed not to understand what jury instructions were, the court stated:

I find that Mr. Baze, by no fault of his own, did not get his methadone dose today. But that he is, nonetheless, able to proceed and is refusing to cooperate. That he is finding ways to obstruct the orderly flow of this case, such as not raising issues of the glasses until he takes the stand. He raised that issue

before and defense counsel provided him with a new pair. The Court, of course, was unaware of his assertion that they'd been stolen until he took the stand and, yet again, used that as a reason to delay this case.

VRP (Mar. 2, 2010) at 154.

The court instructed the jury and recessed to allow Baze to take his next dose of methadone before closing. On the third day of trial, the court allowed Baze to reopen his case to present Bayne's testimony. The jury found Baze guilty as charged. After the verdict, the court stated:

[T]he defendant this morning was lucid and reading without glasses, the first pair having been left in his cell the first day of trial. The second, he said that counsel, defense counsel provided to him but were stolen. Nonetheless, he was able to read the no contact order while he was on the stand and able to read his notes here and appeared to be reading without glasses or difficulty.

VRP (Mar. 3, 2010) at 16. Baze appeals.

DISCUSSION

Unless an insanity defense is raised, a competency examination is required whenever there is "reason to doubt" a defendant's competency. RCW 10.77.060(1). "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect." RCW 10.77.010(15). "A reason to doubt" is not definitive, but vests a large measure of discretion in the trial judge." City of Seattle v. Gordon, 39 Wn. App. 437, 441, 693 P.2d 741 (1985). The court's determination that there is a reason to doubt the defendant's competency is a threshold determination; if the trial court determines no such reason exists, then a competency examination is not required. State v. Lord, 117 Wn.2d 829, 901, 822 P.2d 177 (1991). There are no fixed

signs that invariably require a hearing. State v. O'Neal, 23 Wn. App. 899, 902, 600 P.2d 570 (1979). Factors the court may consider in making this determination include “the ‘defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.’” In re Pers. Restraint of Fleming, 142 Wn.2d 853, 863, 16 P.3d 610 (2001) (quoting State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302 (1967)).

Baze contends that his descriptions of his methadone withdrawal symptoms constituted “reason to doubt” his competency. However, the defendant’s conduct is only one factor of several that a trial court may consider in deciding whether there is a reason to doubt a defendant’s competency. Courts also properly consider a defendant’s apparent understanding of the charges and consequences of conviction, his apparent understanding of the facts giving rise to the charges, and his ability to speak in his own defense. Gordon, 39 Wn. App. at 442. Although Baze claimed to have trouble thinking clearly, there is no evidence that his symptoms adversely affected his competency to stand trial. Importantly, the court found that Baze’s claims regarding his condition were not credible and that he was deliberately refusing to cooperate and attempting to disrupt the proceedings. We do not review credibility determinations. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Moreover, it is clear from the record that Baze understood the proceedings against him. There is no question that Baze understood the charges and the potential for significant prison time and that he understood that the police found him with Bayne at a time the State asserted that the no-contact order was valid. He also attempted to

assert an appropriate defense, arguing that he and Bayne believed that the no-contact order had been lifted. He was unable to more effectively present that defense because he continuously referred to inadmissible hearsay and irrelevant matters and refused to answer the prosecutor's questions. Under these circumstances, the trial court did not doubt Baze's competency to stand trial. Baze fails to demonstrate any abuse of discretion.

In the alternative, Baze contends that his conviction for making a false statement must be reversed because of ambiguity in the "to-convict" instruction. In particular, Baze claims that the instruction relieved the State of the burden of proving that he made the statement to the officer with knowledge that (1) the statement was material and (2) the statement was false or misleading. This element is stated in the pattern jury instructions as: "That the defendant knew both that the statement was material and that it was false or misleading." 11A Washington Practice: Washington Pattern Jury Instructions: Criminal 120.04, at 473 (3d ed. 2008). Here, the court instructed the jury on this element: "That the defendant knew that the statement was false or misleading, and that the statement was material."

Even assuming, without deciding, that the instruction misstates an element of the crime as Baze contends, such a claim is subject to harmless error analysis. State v. Brown, 147 Wn.2d 330, 58 P.3d 889 (2002). In order to hold that an erroneous jury instruction was harmless, we must be convinced beyond a reasonable doubt that the jury verdict would have been the same absent the error. Brown, 147 Wn.2d at 341. When a jury instruction misstates an element of the crime, the error is harmless if that

element is supported by uncontroverted evidence. Brown, 147 Wn.2d at 341.

Here, Officer Renick testified that when he had met Baze and Bayne on previous occasions, Baze had identified himself as “Ronald Goldsmith” or “Ronald Goldberg.” Officer Renick had recently learned from other officers that the name was false and that Baze was the respondent on an order prohibiting contact with Bayne. When Officer Renick confronted Baze and Bayne on the night of the charged offense and told them that he was contacting them because he believed they were violating a no-contact order, Baze again identified himself as “Goldsmith” or “Goldberg.” Officer Renick testified that when he confronted Baze with a photograph on his police database, Baze admitted that he had given the officer a false name. Officer Renick also testified that Baze admitted to knowing of the no-contact order.

Officer Renick’s testimony constitutes uncontroverted evidence that Baze knew of the no-contact order associated with his true name and that Baze knew that the name he provided to the officer was false. In addition, during closing argument, Baze twice admitted guilt. Under these circumstances, we are convinced beyond a reasonable doubt that the jury verdict would have been the same and any error in the to-convict instruction was harmless.

In his statement of additional grounds for review, Baze contends that the trial court left him no choice but to represent himself because his public defender lied to him and the court denied his pretrial motions for continuances to obtain a new attorney. We review a trial court’s decision on a motion for a continuance to replace counsel for an abuse of discretion. State v. Early, 70 Wn. App. 452, 457-59, 853 P.2d 964 (1993).

Such a motion must be timely made and is routinely denied when a defendant's lack of representation is attributable to his or her own lack of diligence in replacing counsel.

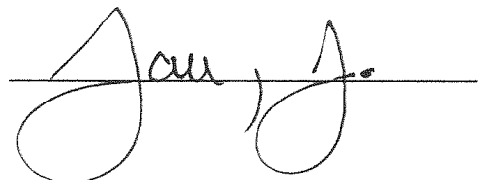
Early, 70 Wn. App. at 457-58.

Here, the trial court denied Baze's motions for a continuance to hire his own attorney on February 10 and March 1, 2010. Baze complained that appointed counsel had lied to him and that he could not trust him. Counsel repeatedly stated that he was ready and willing to represent Baze at trial. Baze did not identify the attorney he wished to hire, and no attorney filed a notice of appearance. Under these circumstances, Baze has not demonstrated an abuse of discretion in the trial court's decisions to deny the motions.

Next, Baze complains that the jury pool was prejudiced against him, that the prosecutor harassed his witness, and that he was too sick to go on with the trial. Because he fails to adequately inform the court of the nature and occurrence of these alleged errors and fails to support his claims with credible evidence in the record, Baze is not entitled to relief. RAP 10.10(c).

Baze also complains that he had no civilian clothes to wear and had to pick a jury in jail clothes. But the record reveals that the trial court granted a recess to allow Baze to change and that defense counsel provided clothing for Baze to change. When questioned by the trial court about his jail attire following the recess, Baze stated that he did not want to go back to change and that he would wear jail clothes for jury selection. Baze fails to identify error.

Affirmed.

A handwritten signature in black ink, appearing to read "J. J.", is written over a horizontal line. The signature is stylized and cursive.

WE CONCUR:

Schivelle, J

Edenborn, J