

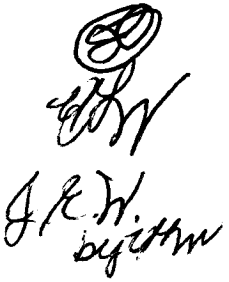
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 KA 0810



STATE OF LOUISIANA

VERSUS

KELLY RAYMOND

Judgment Rendered: October 23, 2009

On Appeal from the 17th Judicial District Court
In and For the Parish of LaFourche
Docket No. 450,829

Honorable Ashley Bruce Simpson, Judge Presiding

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Kelly Raymond

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

HUGHES, J.

Defendant, Kelly Raymond, was originally charged by bill of information with false imprisonment, a violation of LSA-R.S. 14:46 (Count 1); and two counts of aggravated battery, violations of LSA-R.S. 14:34 (Counts 2 & 3). Defendant entered a plea of not guilty. Defense counsel filed a motion to appoint a sanity commission, which was granted by the trial court. Following a sanity hearing in which the trial court found defendant competent to stand trial, the State amended the bill of information to reflect that defendant was charged with two counts of aggravated second degree battery, violations of LSA-R.S. 14:34.7 (Counts 2 & 3). Defendant was rearraigned and entered a plea of not guilty to the amended bill of information.

Defendant waived his right to a jury trial. The State entered a nolle prosequi to Count 1 of the bill of information. Following trial, the trial court determined that defendant was guilty of both counts of aggravated second degree battery. Defendant was sentenced to serve fourteen years at hard labor on each count, with the sentences to be served concurrent. The trial court also noted that on each count, defendant had been convicted of a crime of violence and imposed restrictions regarding diminution of sentence in accordance with LSA-R.S. 15:571.3(B)(2)(a).

Defendant appeals, citing as error the trial court's finding that he was competent to stand trial. For the following reasons, we affirm defendant's convictions and sentences.

FACTS

Defendant and Shaquera Wallace lived together with their minor child in a trailer at the Drachenburg Trailer Park in Raceland, Louisiana. In the early evening of April 15, 2007, the couple argued over defendant's accusation that Wallace had been unfaithful. Wallace denied the accusation and after contacting a relative, left their residence and took their child to the relative's home. Defendant apologized to

Wallace, and drove to the relative's home to pick up Wallace and the child and drive them home. During the ride home, however, it became apparent to Wallace that the defendant was still upset with her.

When they arrived at the trailer, Wallace carried their sleeping child inside and laid her on the bed in the master bedroom. As she turned from the bed, defendant punched her in the stomach, causing her to double over. Defendant struck her again, knocking the breath out of her. Defendant then retrieved a butcher knife and began stabbing Wallace on her arm. Commenting that the knife was too dull, defendant picked up a screwdriver and proceeded to stab Wallace several times in the neck. Throughout the confrontation, defendant kept accusing Wallace of infidelity.

Defendant later plugged in a curling iron and after it was heated, used it to repeatedly burn Wallace's legs. Due to the intense pain she was experiencing, Wallace lost consciousness; however, defendant slapped her until she was awake, and then threatened to burn their child.

Later, defendant used an iron pipe approximately twenty inches long to beat Wallace across the buttocks. Defendant prevented Wallace from leaving their trailer and drove her to work the following day. Wallace eventually went to the emergency room at St. Anne Hospital in Raceland, where she reported defendant's actions to the police. Defendant was later apprehended in Terrebonne Parish.

Following the arraignment, defense counsel filed a Motion to Appoint Sanity Commission. In support of this motion, defense counsel alleged that defendant was mentally incapacitated at the time of the offense, unable to understand the nature of the crime, and unable to assist in his own defense. The trial court granted the motion and appointed Drs. Raphael Salcedo and Maria Braud to the sanity commission. Both doctors filed written reports.

At a sanity hearing, the parties submitted the matter on the doctors' reports and on the previous testimony of Heather Whitney, an emergency medical technician for the Lafourche Parish Jail. The trial court determined that defendant was competent to stand trial.

COMPETENCY OF DEFENDANT

In his sole assignment of error, defendant argues that the trial court erred in finding that he was competent to stand trial. In support of this argument, defendant relies on: his request for mental health attention following his arrest; defense counsel's representations that defendant was unable to assist in his own defense or to provide names of witnesses; defendant's past history of mental health problems; and the report of Dr. Salcedo. Dr. Salcedo recommended that defendant be found incompetent to proceed to trial and that he be remanded to the Eastern Louisiana Mental Health System for further evaluation and treatment.

Louisiana Code of Criminal Procedure article 641 provides that "[m]ental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense." The two-fold test of capacity to stand trial is whether the defendant: (1) understands the consequences of the proceedings, and (2) has the ability to assist in his defense by consultation with counsel. While a court may receive the aid of expert medical testimony on the issue of competency to proceed, the ultimate decision of capacity rests with the trial court. **State v. Bridgewater**, 2000-1529, pp. 13-14 (La. 1/15/02), 823 So.2d 877, 892, cert. denied, 537 U.S. 1227, 123 S.Ct. 1266, 154 L.Ed.2d 1089 (2003).

Given the presumption of sanity in Louisiana jurisprudence, a defendant has the burden to establish his incapacity to stand trial by a preponderance of the

evidence.¹ LSA-R.S. 15:432. The determinations of the trial judge as to competency of the defendant to stand trial are entitled to great weight on review and will not be overturned absent an abuse of discretion. **State v. Gibson**, 2008-0741, p. 5 (La. 11/10/08), 993 So.2d 1193, 1196 (per curiam).

The trial court considered medical records of defendant indicating that he had undergone mental health treatment from July 12, 2001 until December 7, 2001. These records reflect that defendant complained of audio and visual hallucinations, insomnia, and irritability. Defendant was diagnosed with a psychotic disorder and prescribed medication until he ceased keeping his appointments in December 2001. Defendant also relies upon the evaluation of Dr. Salcedo that recommended that defendant was not competent to stand trial at that time and that he be remanded for further evaluation.

In our review, we note that Dr. Salcedo's report reflected that defendant needed further evaluation in order to rule out the possibility that he was malingering. Dr. Salcedo's report indicates that during his evaluation, defendant repeatedly answered "I don't know" to virtually all questions posed, including basic information. According to Dr. Salcedo, defendant's clinical presentation and vocabulary were inconsistent with someone who would be so grossly impaired as to give such a basic simple presentation.

We further note that Dr. Salcedo stated, "I have no opinion as to whether or not [defendant] suffers from a mental disorder. It is quite possible that he might be exaggerating cognitive deficits from which he might actually suffer, or simply outright malingering." Dr. Salcedo also noted that defendant was uncooperative

¹ In **Cooper v. Oklahoma**, 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996), the Supreme Court held that states may require the accused to prove his incompetency to stand trial only by a preponderance of the evidence; a higher standard of "clear and convincing" evidence violates the Due Process Clause. In **State v. Frank**, 96-1136 (La. 10/4/96), 679 So.2d 1365, the Louisiana Supreme Court recognized that **Cooper** invalidated 1990 La. Acts No. 755, amending LSA-C.Cr.P. art. 648 to require a finding of incompetency by "clear and convincing evidence." Thus, Louisiana has returned to its former jurisprudential rule requiring only a preponderance of the evidence. **State v. Gibson**, 2008-0741, p. 5 (La. 11/10/08), 993 So.2d 1193, 1196 (per curiam).

during the examination and that he had no opinion of whether defendant met the **Bennett** criteria for competency.

The trial court also considered a report from Dr. Braud, on which the trial court stated it placed greater emphasis. Dr. Braud stated in her report that in addition to meeting with defendant and reviewing records of his arrest and incarceration, she also interviewed officials of the Lafourche Parish Jail, including Lieutenant Shawn Scott, Heather Whitney, and Deputy Peter Chaisson, who had interacted with defendant following his arrest. None of the jail officials observed any behavior indicative of an abnormal psychiatric condition or communication issue. Lieutenant Scott noted to Dr. Braud that he had to relocate defendant because he was trying to run the entire cell block.

According to Dr. Braud's report, she was of the opinion that defendant had the capacity to understand the proceedings against him and assist in his own defense. Dr. Braud opined that defendant was exaggerating long-term and short-term memory deficits and psychotic symptoms. Dr. Braud concluded that defendant was malingering and purposely attempting to present himself as incompetent. Dr. Braud's report also noted that defendant frequently answered "I don't know" to basic questions, and the few times that he provided a substantive answer, he could not provide any answers to follow-up questions.

After reviewing this matter, we cannot say that the trial court erred in finding defendant competent to stand trial. Although the experts provided conflicting recommendations, they were in agreement that defendant was uncooperative. Dr. Braud concluded that it was likely that defendant was exaggerating his symptoms and malingering and Dr. Salcedo found it "quite possible" that the defendant was indeed exaggerating his symptoms and malingering. Under these circumstances, we cannot say that the trial court abused its discretion in reaching the determination

that defendant was competent to stand trial. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.