Affirmed and Opinion filed May 11, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00590-CR

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OMAR HASSAN LITTLES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 732,530

O P I N I O N

Omar Hassan Littles appeals a conviction for injury to a child on the ground that he was denied due process by the trial court's failure to determine his competency to stand trial. We affirm.

Background

In 1996, appellant was charged with injury to a child. He pleaded no contest to the charge and was given deferred adjudication probation for ten years. In 1999, the State filed a motion to adjudicate alleging that appellant had violated the terms of his probation. After

pleading true to the allegations, appellant was found guilty and sentenced to ten years confinement.

Competency

Appellant's only point of error argues that the trial judge's failure to conduct a competency hearing or to make a competency finding before the hearing on the motion to adjudicate was a violation of: (a) his due process rights under the United States Constitution and (b) article 46.02, section 2(b), of the Texas Code of Criminal Procedure. Appellant contends that his background and history of treatment were sufficient to create a bona fide doubt in the trial judge's mind as to his competence.

A person is incompetent to stand trial if he does not have: (1) sufficient present ability to consult with his attorney 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. 46.02, §1A (Vernon Supp. 2000). A defendant is presumed competent to stand trial and must be found competent to stand trial unless proved incompetent by a preponderance of the evidence. *See id*. The issue of a defendant's incompetency may be raised in either of two ways: (1) pretrial, on written motion of the defendant or his counsel, or on the court's own motion; or (2) during trial, if evidence of the defendant's incompetency is brought to the attention of the court from any source. *See id*. at § 2.

In determining whether evidence requires conducting a competency hearing, the trial court is to consider only evidence tending to show incompetency, and not evidence showing competency. *See Moore v. State*, 999 S.W.2d 385, 393 (Tex. Crim. App. 1999). A competency hearing is not required unless the evidence is sufficient to create a bona fide doubt in the mind of the judge whether the defendant meets the test of legal competence. *See id*. In general, a bona fide doubt is raised only if the evidence indicates recent severe mental illness, at least moderate mental retardation, or truly bizarre acts by the defendant. *See Collier v. State*, 959 S.W.2d 621, 625 (Tex. Crim. App. 1997). Prior hospitalization and treatment do not *per se* warrant conducting a separate competency hearing. *See Moore*, 999 S.W.2d at 395.

Similarly, evidence of mental impairment alone does not require a competency hearing to be conducted where there is no evidence indicating that a defendant is incapable of consulting with counsel or understanding the proceedings against him. *See id*. On appeal, the standard of review is abuse of discretion. *See id*. at 393.

In this case, before the hearing on the motion to adjudicate, appellant's trial counsel filed unsworn motions for psychiatric examinations to determine appellant's competency and sanity. Both motions cited appellant's past use of medications and his years in Children's Protective Services ("CPS") custody as reasons for psychiatric examinations.[1] Appellant's brief contends that the following reflects his incompetency: (1) he was in CPS custody as an abandoned and mentally disturbed youth and was on medication from age fifteen to eighteen;[2] (2) appellant testified during the adjudication hearing that the medications were "[t]o calm me down, control my temper, reduce the voices and improve judgment"; (3) the evaluation done by Dr. Brown, prior to the adjudication hearing, reflected that appellant was continuing, periodically, to hear voices; (4) a January 1991 report from the Harris County Psychiatric Center stated that appellant "has a long history of violent aggressive behavior and placements . . . ."; (5) the same report states that appellant "Has difficulty remembering recent and remote incidents and denies selective memory loss"; (6) appellant was removed from his mother's home by CPS for physical abuse when he was two or three years old; (7) he was then placed in a foster home where he was allegedly sexually and physically abused; (8) a psychological report from 1991 states that appellant "appears to need intensive psychiatric follow-up and treatment. . . . He may need to be in a special environment where his violent behavior can be controlled and where he is not a threat to himself or others"; (9) appellant was diagnosed in

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[1] Both motions were granted, and two independent psychologists examined appellant, both concluding he was competent to stand trial.

[2] Appellant was twenty years old at the time of the charged offense in 1996, and was almost twenty-three years old when judgment was entered in 1999.

1992 with conduct disorder, bipolar disorder, depression and paranoid personality traits; (11) appellant "failed to perform any of the conditions of his probation."

Although this alleged evidence indicates that appellant has had an unfortunate upbringing and periods of mental impairment, it pertains to events and psychological examinations occurring several years before the adjudication hearing in this case. At the time of that hearing, appellant testified that he had been taking medications, but there was no evidence of recent severe mental illness, bizarre acts, moderate mental retardation, or any other indication that appellant was unable to consult with his attorney or understand the proceedings against him.[3] Because the evidence in this case was therefore insufficient to raise a bona fide doubt regarding appellant's competency, the trial judge's failure to hold a hearing on that issue was not an abuse of discretion. Accordingly, the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed May 11, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

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[3] *See Moore*, 999 S.W.2d at 396 (noting that it is "within the purview of the trial judge to distinguish evidence showing only impairment from that indicating incompetency as contemplated by law").