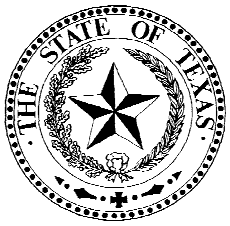
Affirmed and Opinion filed December 6, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-01368-CR

ROBERT DWAYNE SANDIFORD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from 232nd District Court
Harris County, Texas
Trial Court Cause No. 843,148

O P I N I O N

Robert Dwayne Sandiford appeals a conviction for burglary of a habitation with intent to commit theft[1] on the grounds that the trial court abused its discretion in: (1) failing to hold a competency hearing; (2) allowing inadmissible testimony regarding appellant's criminal history to be presented to the jury; and (3) refusing to instruct the jury regarding the voluntariness of appellant's confession. We affirm.

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[1] A jury found appellant guilty and assessed punishment of 20 years confinement and a $5000 fine.

Competency Hearing

Appellant's first issue argues that the trial court abused its discretion by failing to hold a hearing to determine whether appellant was competent to stand trial after evidence of his incompetency was presented at trial.

The due process right to a fair trial prevents the government from subjecting a person to trial who lacks the mental capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense. *Alcott v. State*, 51 S.W.3d 596, 598 (Tex. Crim. App. 2001). If during the trial, "evidence of the defendant's incompetency" is brought to the attention of the court from any source, the court must conduct a hearing out of the presence of the jury to determine whether there is evidence to support a finding of incompetency to stand trial. TEX. CODE CRIM. PROC. ANN. art. 46.02 § 2(b) (Vernon 1979).

"Evidence of a defendant's incompetency" in section 2(b) means evidence sufficient to raise a bona fide doubt as to the defendant's competency to stand trial. *Alcott,* 51 S.W.3d at 599. Such evidence need not be sufficient to support a finding of incompetency, and "bona fide doubt" has been used interchangeably with "reasonable doubt." *Id.* at 599 n.2. Although evidence is generally sufficient to create a bona fide doubt if it shows recent severe mental illness, at least moderate retardation, or truly bizarre acts by the defendant,[2] unruly and disruptive behavior that does not show a defendant's inability to communicate with counsel or appreciate the proceedings against him are not sufficient to raise a bona fide doubt. *Moore v. State*, 999 S.W.2d 385, 395 (Tex. Crim. App. 1999). In determining whether to conduct a competency hearing, the trial court is to consider only evidence tending to show incompetency, and not evidence showing competency. *Id*. at 393. A trial court's ruling on whether to conduct an incompetency hearing is reviewed for abuse of discretion. *Id*.

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[2] *Id.* at 599 n.2.

In this case, appellant claims that a bona fide doubt as to his competency to stand trial was raised by evidence that he: (1) had a long history of mental illness, (2) attempted suicide after his pre-trial competency evaluation, (3) threatened to rip all his clothes to threads, (4) threatened to force the bailiff to use his gun, (5) "was talking out in the left field," and (6) demanded his tennis shoes. In addition, appellant's counsel stated:

> We have a problem. [Appellant] refuses . . . to come out of the jail cell.
>
> I'm really beginning to question his competency . . . . He's mixing apples and oranges. That's the only way I know how to describe what's going on.
>
> He has presently threatened to rip all his clothes to shreds.
>
> The problem is . . . . In working with him throughout the months, there are times . . . when he is in a good mood and he's talking normally and we can carry on a conversation on which we're on the same plane of thought.
>
> When we came in for the plea, he was in this . . . other mood when he's talking out in the left field . . . . And it's hard for us to . . . to be on the same train of thought.
>
> And I question if when he's in these moods when we're not on the same plane of thought and we're talking about things out in left field, if he's really competent and understands the nature and the consequence of what is going on here.
>
> And so I'm questioning if he's really competent to come in here today and be tried.
>
> And . . . today he's just very angry . . . And he's not making sense. It's hard for us to talk about coming out to the jury when he wants to talk about how angry he is and how if he comes out here, he's going to rip his clothes to shreds.

However, evidence of mental illness, depression, attempts to commit suicide, and aggressive and uncooperative behavior do not amount to incompetency.[3] Apart from counsel's characterizations of appellant's conduct as indicating incompetency, it is not

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[3] *Moore v. State*, 999 S.W.2d 385, 395 (Tex. Crim. App. 1999); *Townsend v. State*, 949 S.W.2d 24, 27 (Tex. App.—San Antonio 1997, no pet.); *Guzman v. State*, 923 S.W.2d 792, 798 (Tex. App.—Corpus Christi 1996, no pet.).

possible to discern whether the behaviors she describes reflect an inability to understand and communicate or merely anger, uncooperativeness, or a desire to disrupt the proceedings. In light of this ambiguity in the evidence, and the fact that the trial court was in a better position to interpret it first hand, we cannot say that the evidence raised a bona fide doubt about appellant's competency or, thus, that the trial court abused its discretion in failing to conduct a competency inquiry. Accordingly, appellant's first issue is overruled.

Instruction to Disregard

Appellant's second issue contends that the trial court abused its discretion by refusing to instruct the jury to disregard Police Officer Follis's testimony regarding appellant's prior convictions after sustaining appellant's objection to that testimony. However, the trial court did instruct the jury to disregard this testimony, after which appellant requested no further relief. Because appellant received all the relief he requested, this issue presents nothing for our review and is overruled.

Voluntariness Instruction

Appellant's third issue asserts that the trial court abused its discretion by failing to charge the jury regarding the voluntariness of appellant's confession after he presented evidence that he suffered from mental illness, was under the influence of pain medication, and was given unspecified promises in exchange for his confession.[4] However, appellant fails to point to any evidence in the record that he was under the influence of pain medication, suffered from mental illness, or was given any promises in exchange for his confession. On the contrary, Officer Mornat testified that he did not make appellant any promises, and the arresting Officer testified that he let appellant take only the medication for

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[4] When the evidence presented at trial raises a factual dispute over whether a defendant's written statement was voluntary, he is entitled to an instruction in the jury charge advising the jury on the law pertaining to such statement. TEX. CODE CRIM. PROC. ANN. art. 38.22, § 7 (Vernon 1979); *Dinkins v. State*, 894 S.W.2d 330, 353 (Tex. Crim. App. 1995). The issue of voluntariness arises when any evidence suggests the statement was not given in conformity with article 38.22, section 2, of the Code of Criminal Procedure. *Dinkins*, 894 S.W.2d at 353.

his condition, and not the prescribed pain medication, when appellant was released from the hospital. Accordingly, appellant's third issue is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 6, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.[5]

Do Not publish — TEX. R. APP. P. 47.3(b).

[5] Senior Justice Don Wittig sitting by assignment.