

NO. COA14-302

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2015

STATE OF NORTH CAROLINA

v.

Cumberland County
No. 10 CRS 4885

DENNIS HOWARD NEWSON

Appeal by Defendant from judgments entered 30 May 2012 by Judge Tanya T. Wallace in Superior Court, Cumberland County. Heard in the Court of Appeals 6 October 2014.

Attorney General Roy Cooper, by Assistant Attorney General Kathleen N. Bolton, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Mary Cook and Assistant Appellate Defender Anne M. Gomez, for Defendant.

McGEE, Chief Judge.

Dennis Howard Newson ("Defendant") appeals his conviction of assault with a deadly weapon on a government official and two counts of communicating threats. Defendant contends he was not competent to stand trial or represent himself *pro se* and asks for a new trial. We disagree.

I. Background

Defendant had a personal confrontation with Hoke County Sheriff Hubert Peterkin ("Sheriff Peterkin") and other law enforcement officers at the Fayetteville Western Sizzlin restaurant on 10 March 2010. The details of that confrontation are set out in *State v. Newson*, __ N.C. App. __, 753 S.E.2d 399 (2013) (unpublished). Two weeks later, on 23 March 2010, Defendant was indicted for (1) assault with a firearm or other deadly weapon on a Government officer or employee; (2) assault with a deadly weapon with intent to kill; and (3) two counts of communicating threats. Subsequently, Defendant's competency to stand trial was questioned.

Dr. Nicole Wolfe ("Dr. Wolfe"), a forensic psychiatrist at Dorothea Dix Hospital, completed a competency evaluation with Defendant on an inpatient basis in June and July of 2010. Dr. Wolfe diagnosed Defendant as having a personality disorder, not otherwise specified, with narcissistic and obsessive features. During a subsequent competency hearing in August 2010, Defendant often rambled and interrupted the trial court. Nonetheless, based on Dr. Wolfe's report, the trial court found Defendant competent to stand trial.

The trial court held a second competency hearing in April 2011. During that hearing, Defendant was combative, disruptive,

and went off on tangents. The trial court again reviewed Dr. Wolfe's report and noted that:

[Defendant] is well-versed in legal matters; he had no difficulty readily and thoroughly identifying the roles of various players in the courtroom; he understands plea-bargaining and jury matters; [Defendant] is viewed as comprehending his situation in reference to these proceedings and understanding the nature and object of the proceedings; he has the ability to assist in his defense in a rational and a reasonable manner if he so chooses; he is viewed as capable of proceeding to trial. I would agree with and further note that he has the ability to represent himself [even though] he has exhibited - well, what I would characterize as deliberately obstreperous and, perhaps, mendacious behavior[.]

The trial court held a third competency hearing in June 2011. Pursuant to N.C. Gen. Stat. § 15A-1242, the trial court conducted a full colloquy with Defendant and determined that Defendant was not only competent to stand trial but that he knowingly and voluntarily waived his right to counsel at trial. During the remainder of the hearing, Defendant made a number of "nonsensical and irrelevant" motions and was combative.

Several months later, Defendant's competency was brought into question again. At a hearing in September 2011, Defendant stated his name was "Noble Dennis Ali" and that he was from South Africa. Defendant also declared himself a "national citizen" and claimed that the trial court lacked jurisdiction

over him. Defendant also argued he was entitled to "consulate" and that "consulars" in South Africa were waiting to be called to intervene in the case. At the conclusion of this hearing, the trial court ordered Defendant to be examined at Central Regional Hospital to determine his capacity to proceed.

In November and December of 2011, Dr. Mark Hazelrigg ("Dr. Hazelrigg"), a forensic psychologist at Central Regional Hospital, completed a second competency evaluation on Defendant. Dr. Hazelrigg diagnosed Defendant as having "a mental disorder, which is manifested in loud, fast speech, which is poorly organized, culminating in illogical/nonsensical statements, as well as apparent delusions." Dr. Hazelrigg advised the trial court that Defendant was incompetent to proceed. The trial court held another competency hearing in February 2012, and adjudicated Defendant incompetent to proceed.

Defendant was then transferred to the Adult Admissions Unit at Cherry Hospital. During Defendant's month-long inpatient stay at Cherry Hospital, he refused to take medications or otherwise participate in therapy of any kind. Nonetheless, Defendant's treating physician, Dr. Paul Kartheiser ("Dr. Kartheiser"), reported that "there was a lack of significant symptomology which [might] represent [an] Axis I [psychiatric] disorder and that the difficulties that the patient demonstrated

were more attributable to characterological factors and a volitional unwillingness to participate more fully in the diagnostic evaluation or in all likelihood his legal situation." Dr. Kartheiser sought a second opinion from Cherry Hospital's clinical director, Dr. Jim Mayo, who reported that "no clear Axis I [psychiatric disorder] is present and that [Defendant's] current behaviors reflect [a] severe Axis II [personality disorder], primarily narcissistic with obsessional and antisocial features".

Dr. Steven D. Peters ("Dr. Peters"), a forensic psychologist at Cherry Hospital, conducted a third competency evaluation with Defendant in March 2012. After interviewing Defendant, reviewing Defendant's medical records, and consulting with Dr. Kartheiser, Dr. Peters compiled a forensic report on Defendant ("Dr. Peters' report"). Dr. Peters' report states: "It is the consensus of the psychiatric staff [at Cherry Hospital] that [Defendant] is invested in manipulating the legal system and that he has volitional control over his actions." Dr. Peters' report goes on to refer to Defendant's behavior as "malingering" and further states that:

[Defendant] currently is psychiatrically stable, demonstrates sufficient knowledge and comprehension of the court system[.] [I]t is my professional opinion that he is Competent to Proceed. [Defendant] has a

significant history of dramatization and acting out for effect, but is able to function adequately at this time. For the most part[,] his unusual or bizarre behavior is under conscious control and is in the service of manipulation. Whether [Defendant] will choose to proceed appears to be a relevant question, more so than if he has the capacity to proceed. He appears to be less motivated to proceed and is more invested [in] prolonging his engagement with the legal system. It is felt that he could proceed, if he was so interested. He can be held to the same standards of conduct as any other individual and can benefit from having consequences to his actions as anyone else. Mr. Newson will require clear and firm limits when it comes to his court room behavior, with significant consequences for his on-going efforts to play the system or otherwise manipulate the process.

A final competency hearing was held by the trial court on 7 May 2012. Although Defendant was able to participate in court proceedings and examine witnesses throughout that hearing, he was combative, disruptive, and went off on tangents. After Defendant cross-examined Dr. Peters *pro se*, at length and often through repetitive or irrelevant questioning, the trial court stopped Defendant's cross-examination of Dr. Peters. By order dated 8 May 2012, and based upon Dr. Peters' report and testimony, the trial court found Defendant competent to stand trial.

Defendant's trial began 21 May 2012. The first day of trial was largely spent reviewing a number of Defendant's *pro se*

pretrial motions. Defendant's brief states that Defendant was "rude, rambled, [and] talked over the trial court" during that time. After the trial court denied several of Defendant's motions, Defendant made a request for counsel. The next day, the trial court noted that Defendant "has repeatedly hired and fired [his] attorneys . . . and that the only reasons whereby [Defendant] told the [c]ourt yesterday that he desired to have an attorney was because many of his motions were denied after being heard by the [c]ourt." Nonetheless, the trial court appointed standby counsel for Defendant ("Standby Counsel").

Sheriff Peterkin was on the witness stand for the majority of the third day of trial. During Sheriff Peterkin's direct examination by the State, Defendant was able to make timely objections, and one of Defendant's objections was sustained by the trial court. Defendant's cross-examination of Sheriff Peterkin progressed logically, although Defendant's lines of questioning focused mostly on matters that were not entirely relevant to Defendant's case, such as other disputes Defendant had with Sheriff Peterkin. Defendant also was able to argue against numerous objections made by the State during cross-examination, and Defendant's arguments were frequently successful. However, as the day progressed, Defendant

interrupted the trial court with increasing frequency and became more combative.

Before continuing the following day with Sheriff Peterkin's testimony, the trial court noted that

[t]his morning as the jury gathered, the jury addressed the bailiff and said, We need to talk to the Judge. And the bailiff answered, as he should have, What's the matter? Is there something wrong? And there [was] - the reply of one of the jurors was that, We have jobs. How long is this going to take? And he's rambling. The bailiff, as he should have, cut everything off. I cannot talk to the jury, but I need to inform you what was said, and I don't know who they were talking about when they said, "he's rambling," but I felt like everybody needed to have notice of that.

Nonetheless, Defendant continued his lengthy cross-examination of Sherriff Peterkin, and the trial court repeatedly warned Defendant about continuing to ask already-answered or irrelevant questions. Eventually, the trial court exercised its discretion under Rule 611 of the North Carolina Rules of Evidence and cut off Defendant's cross-examination of Sherriff Peterkin. See N.C. Gen. Stat. § 8C-1, Rule 611 (2013) ("The [trial] court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . avoid needless consumption of time[] and [] protect witnesses from harassment or undue embarrassment.").

This pattern continued into the fifth day of trial. Defendant interrupted the proceedings, argued with witnesses, and repeatedly asked irrelevant questions. The trial court also stopped Defendant's direct and redirect examinations of Chief Deputy Gary Hammond ("Chief Hammond"), one of the law enforcement officers present at the Western Sizzlin on 10 March 2010.

On the sixth day of trial, near the end of the trial court's morning break, Defendant notified the trial court that he needed to use the facilities and that he also had hemorrhoids, which needed treatment. Although Defendant had previously been warned about delaying the proceedings by waiting to use the facilities until the end of breaks, the trial court granted Defendant's request and allowed Defendant extra time to seek medical attention. However, Defendant did not return to the courtroom when instructed, and the trial court found that Defendant was "making efforts to delay and obstruct this hearing from occurring." After an hour and a half, of what was supposed to be a fifteen-minute break, Defendant did return to the courtroom, but only after Standby Counsel informed Defendant that the trial court would close his case if he did not return to the courtroom.

Defendant next called Sheriff Peterkin to the stand for a second time, and the trial court again cut off Defendant's examination due to his asking irrelevant or already-answered questions. Defendant then called Chief Hammond to testify for a second time. Defendant's disruptive behavior continued. At one point during Chief Hammond's testimony, Juror Ten stood up in the jury box, and the trial court excused the jury from the courtroom. Defendant then began a "tirade" directed at the trial court. Although the trial court asked Defendant whether he had anything relevant to ask Chief Hammond, it received no direct response from Defendant. The trial court again stopped Defendant's examination of Chief Hammond.

The trial court then received a note from the jury and the following transpired:

THE COURT: This is what the jury has asked[:] How much longer must we continue to hear the same questions? Juror number ten got up because he thought we were about to be asked to leave. All right. He's just had it. All right. Did you hear what the jury had to say, Mr. Defendant? How much longer must we continue to hear the same questions? And juror ten got up because he thought we were about to be asked to leave. Did you hear that, Mr. Newson? Mr. Newson, did you hear that?

DEFENDANT: (No response.)

THE COURT: Let the record reflect the defendant refuses to answer the questions of

the [c]ourt. Let's have the jury come back into the court.

On the seventh day of trial, Defendant called numerous people to the stand who were not in the courtroom. At one point, Juror Two stood up and began waving his hand in the air. Defendant then decided to testify on his own behalf. However, the process of being sworn took an inordinate amount of time. Defendant wanted to consult Standby Counsel beforehand; he then insisted on placing numerous items on the evidence table while also ignoring the trial court's direction to proceed with being sworn; he refused to place his left hand on a Bible; and he would not raise his right hand to affirm that he would testify truthfully. At that time, both Juror Two and Juror Ten stood up and began waving their hands. The State pointed this out to the trial court and Juror Two began to speak. The trial court replied: "All Right. That's fine[,] " and the proceedings continued.

Defendant's actual testimony on direct examination focused largely on what Defendant saw as a tumultuous relationship between himself and Sheriff Peterkin, and the events at the Western Sizzlin on 10 March 2010. Although Defendant's testimony was rambling and often irrelevant, it followed a generally logical progression and lasted for more than an hour.

The trial court had instructed Defendant to organize his testimony into a question-answer format, with Defendant asking a question and then answering it. Defendant maintained this format throughout his own direct examination, until his testimony was cut off by the trial court.

During the State's cross-examination of Defendant, Juror Two and Juror Ten stood up and raised their hands, indicating the jury needed a break, and the jury was excused from the courtroom. The jury then sent a note to the judge, who read the following out loud:

I am tired of constant interruptions of the
- [pause] - oh, okay - of the [c]ourt for
his amusement and his allowance to continue
with commentary after told to shut up; I
feel it is a mockery of the judicial system
at the expense of all of - times and means
to make a living; I am not amused; I think
the courtroom should be controlled by the
judge and not let the dialogue continue; if
the defendant is incapable of following the
order of the [c]ourt, as other attorneys,
then he should not be allowed to represent
himself; I will not sit through another
name-calling session to show blatant
disrespect to you or other - something -
serving as law abiding citizens.

In response, Defendant moved for "a mistrial for bias and prejudice" by the jurors. The trial court denied Defendant's motion. The jury returned to the courtroom. The State's cross-examination of Defendant resumed but deteriorated rapidly.

Juror Two again stood up. The trial court ordered Defendant from the courtroom and noted that Defendant was "a malingerer, someone who acts out for dramatic effect[.]" Defendant had to be forcibly removed from the courtroom. The trial court rested Defendant's case in his absence.

Defendant was allowed to return to the courtroom for the charge conference. During the charge conference, Defendant did not interrupt the trial court and made a logical - albeit somewhat misinformed - argument regarding the jury instructions he preferred, and he was able to cite both case law and a relevant North Carolina statute in support of his position. Defendant also expressed his view that the trial court was trying to "railroad" him.

Closing arguments followed and were unrecorded. However, the court reporter noted the following:

The defendant made an argument to the jurors. Following several objections which were sustained by the [c]ourt and during the playing of a video, the following transpired: Juror Number 2 . . . stood and demonstrated frustration.

Defendant continued to make his closing arguments and eventually had to be cut off by the trial court. Defendant then asked for a glass of water.

During the State's closing arguments, Defendant interrupted by protesting about the amount of water he was given. Defendant was again removed from the courtroom, but not before throwing his cup of water on the floor. After the State completed its closing argument, the trial court excused the jury and instructed Standby Counsel to confer with Defendant as to whether Defendant wished to be present - and silent - in the courtroom for the jury instructions. Standby Counsel left the courtroom, conferred with Defendant, returned, and indicated that Defendant did wish to be present for the jury instructions, although "as an officer of the Court, [Standby Counsel did] not believe it would be proper to relay [Defendant's] specific message to" the trial court.

Defendant was present during the trial court's lengthy instructions to the jury and remained silent. Defendant then made timely objections to the jury instructions, which were denied.

The jury found Defendant guilty of assault with a deadly weapon on a government official, assault with a deadly weapon, and two counts of communicating threats. The trial court arrested judgment on the charge of assault with a deadly weapon, noting that the elements of assault with a deadly weapon fit within the elements of assault with a deadly weapon on a

government official, and entered judgments on 30 May 2012. Defendant filed a *pro se* petition for a writ of certiorari with this Court on 3 June 2013 to review his conviction, which this Court granted.

II. Defendant's Competence to Stand Trial

Defendant first challenges the trial court's finding that he was competent to proceed to trial and argues that the trial court could not have properly relied on Dr. Peters' report by finding him competent to proceed. Defendant argues that Dr. Hazelrigg's findings should have been determinative. We note that this argument was abandoned by Defendant's appellate counsel during oral arguments. Regardless, in spite of Dr. Hazelrigg's earlier medical opinion that Defendant experienced some kind of delusional disorder, Defendant has not presented this Court with any authority indicating that Dr. Hazelrigg's lone medical opinion was conclusive of Defendant's competence, especially in light of the medical opinions of numerous other doctors that Defendant was malingering. At the very least, the trial court's determination that Defendant was competent to proceed was not, as Defendant argues, entirely "unsupported by the evidence." In light of Defendant's lack of a meaningful argument on this point, and his abandonment on appeal, the trial court's finding of competence receives deference from this

Court. See *State v. Chukwu*, __ N.C. App. __, __, 749 S.E.2d 910, 917 (2013).

Alternatively, Defendant contends that the trial court should have instituted, *sua sponte*, another competency hearing in light of Defendant's behavior at trial. Defendant did not affirmatively raise this issue with the trial court during trial. Thus, Defendant has failed to preserve this argument for review. See N.C.R. App. P. 10(a)(1). However, this Court previously has invoked Rule 2 of the North Carolina Rules of Appellate Procedure to review the unpreserved issue of whether a *pro se* defendant was competent to stand trial. See *State v. Robertson*, 161 N.C. App. 288, 290-91, 587 S.E.2d 902, 904 (2003). As such, we elect to address Defendant's arguments in the exercise of our discretion under Rule 2 of the North Carolina Rules of Appellate Procedure.

This Court held the following in *Chukwu*:

Trial courts have a constitutional duty to institute, *sua sponte*, a competency hearing *if there is substantial evidence before the court* indicating that the accused may be mentally incompetent. On review, this Court must carefully evaluate the facts in each case in determining whether to reverse a trial judge for failure to conduct *sua sponte* a competency hearing where the discretion of the trial judge, as to the conduct of the hearing and as to the ultimate ruling on the issue, is manifest. Further:

Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant to a *bona fide doubt inquiry*. There are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.

While the trial court's finding of competency receives deference, other findings and expressions of concern about the temporal nature of [a] defendant's competency may raise a bona fide doubt as to a defendant's competency. We thus review the record to determine (i) whether there is a bona fide doubt as to Defendant's competency and (ii) whether Defendant's competency was temporal in nature.

__ N.C. App. at __, 749 S.E.2d at 917 (internal quotation marks and citations omitted).

Defendant argues that his generally disruptive and "obstreperous" behavior at trial raises a bona fide doubt about his competence at trial. Specifically, Defendant argues that, because similar behavior led Dr. Hazelrigg to conclude that Defendant suffered from an incapacitating mental illness, the trial court necessarily was required to institute, *sua sponte*, a competency hearing when faced with his behavior at trial.

As a preliminary matter, Defendant's behavior at trial generally did not deviate greatly from his conduct at the

competency hearings in August 2010, April 2011, June 2011, and May 2012, wherein Defendant was found competent to proceed or represent himself. Moreover, Dr. Hazelrigg's prior medical opinion finding Defendant incompetent to stand trial may be "relevant" to a bona fide doubt inquiry into Defendant's competence, see *id.*, but his opinion alone is not necessarily conclusive. The trial court also had access to the medical opinions of four other doctors who believed Defendant's generally disruptive behavior was volitional. In fact, it was the consensus of the clinical staff at Cherry Hospital that Defendant was a malingerer who was "invested in manipulating the legal system[.]" Thus, the mere fact that Defendant's disruptive behavior continued throughout trial also does not necessarily raise a bona fide doubt about Defendant's competence. In spite of Defendant's behavior, Defendant still made motions and objections, examined witnesses, introduced evidence, and made arguments on his own behalf throughout most of the proceedings.

Perhaps most illuminating was Defendant's conduct near the end of trial. Indeed, Defendant's behavior during that time — which twice necessitated his being forcibly removed from the courtroom — was the most extreme behavior Defendant exhibited that appears in the record. And yet, immediately after

exhibiting such behavior, Defendant was sufficiently in control of his faculties to participate in the charge conference and then later sit silently through eleven recorded pages of trial transcript as the trial court instructed the jury. Following both the charge conference and jury instructions, Defendant was able to make logical – albeit somewhat misinformed – arguments to the trial court regarding his objections to the jury instructions that were given.

At the very least, there is no meaningful evidence in the record to suggest Defendant was experiencing a mental illness that manifested in such an acutely temporal fashion as to explain Defendant's outbursts near the end of trial, which were then followed by Defendant sitting quietly in court and participating in the proceedings only minutes later. As such, Defendant's continuously disruptive and "obstreperous" behavior at trial did not raise a bona fide doubt about his competence, see *id.*, and we find that the trial court did not manifestly abuse its discretion by not instituting, *sua sponte*, additional competency proceedings at trial.

III. Defendant's Competence to Proceed *Pro Se*

Defendant further contends that, even if he was competent to stand trial, the trial court erred by allowing him to waive counsel and represent himself. In support of this position,

Defendant relies primarily on *Indiana v. Edwards*, 554 U.S. 164, 174, 171 L.Ed.2d 345, 355 (2008), which held that "the Constitution permits a State to limit [a] defendant's self-representation right by insisting upon representation by counsel at trial — on the ground that the defendant lacks the mental capacity to conduct his trial defense unless represented." Specifically, Defendant notes that the trial court did not make an express inquiry under *Edwards* at trial.

Our Supreme Court held in *State v. Lane*, 365 N.C. 7, 22, 707 S.E.2d 210, 119 (2011), that where a defendant,

after being found competent, seeks to represent himself, the trial court has two choices: (1) it may grant the motion to proceed *pro se*, allowing the defendant to exercise his constitutional right to self-representation, if and only if the trial court is satisfied that he has knowingly and voluntarily waived his corresponding right to assistance of counsel . . . ; or (2) it may deny the motion, thereby denying the defendant's constitutional right to self-representation because the defendant falls into the "gray area" and is therefore subject to the "competency limitation" described in *Edwards*. . . . [Only then will the trial court] make findings of fact to support its determination that the defendant is unable to carry out the basic tasks needed to present his own defense without the help of counsel [pursuant to *Edwards*].

(citations and internal quotation marks omitted). Thus, in the present case, because the trial court *granted* Defendant's motion

to proceed *pro se*, *Edwards* is inapplicable, and we need only examine whether "the trial court properly conducted a thorough inquiry and determined that [D]efendant's waiver of his constitutional right to counsel was knowing and voluntary." *Id.* at 23, 707 S.E.2d at 220.

Defendant acknowledges that the trial court conducted a full counsel-waiver colloquy with him during the June 2011 competency hearing and determined that Defendant knowingly and voluntarily waived his right to counsel at trial. See N.C. Gen. Stat. § 15A-1242 (2013). However, Defendant further argues in his brief that the trial court should have conducted an additional counsel-waiver colloquy with him at trial. In support of this contention, Defendant also relies primarily on *Edwards*, which we have already determined is inapplicable in the present case. Otherwise, Defendant presents this Court with a plethora of authority, from North Carolina and elsewhere, wherein appellate Courts remanded similar cases - that were decided before *Edwards* - so that the trial courts could make findings as to whether they would have denied the defendants' motions to proceed *pro se* if they had known at the time that the Constitution permitted them to do so. However, the present case was decided *after Edwards* and the trial court is presumed to know the law as it existed when it granted Defendant's motion to

proceed *pro se*. See *Moore v. W O O W, Inc.*, 253 N.C. 1, 6, 116 S.E.2d 186, 189 (1960) ("The law arises upon the facts alleged, and the [trial] court is presumed to know the law." (citations omitted)). Therefore, we find that the trial court did not err in its determination that Defendant knowingly and voluntarily waived his right to counsel, nor did the trial court err by not making any further inquiry under *Edwards*.

IV. Juror Bias

Defendant contends that the trial court erred by denying his motion for a mistrial on the ground that the jury was prejudiced against him. Members of the jury did seem to be frustrated with Defendant, as demonstrated through their notes to the trial court and the fact that some members stood up several times in apparent exasperation during the proceedings. However, where a defendant was "prejudiced in the eyes of the jury by his own misconduct, he cannot be heard to complain." *State v. Marino*, 96 N.C. App. 506, 507, 386 S.E.2d 72, 73 (1989). Because we find that Defendant was competent at trial, any possible bias by the jury would have arisen from Defendant's volitional conduct.¹ Therefore, the trial court did not err when it denied Defendant's motion for a mistrial.

¹ We note that the jury asked to review, and did review, specific pieces of evidence before rendering its verdict.

No error.

Judges STEPHENS and DIETZ concur.

Moreover, on the charge of assault with a deadly weapon with intent to kill, the jury only found Defendant guilty of the lesser-included offense of assault with a deadly weapon. If anything, these facts suggest that the jury actually was impartial and deliberate while rendering its verdict, even if some of its members were frustrated with Defendant.