IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-82

No. COA19-1124

Filed 16 March 2021

Durham County, Nos. 16CRS053549-50

STATE OF NORTH CAROLINA

v.

TERRY WAYNE HARRIS, Defendant.

Appeal by Defendant from judgments entered 29 August 2018 by Judge James E. Hardin, Jr., in Durham County Superior Court. Heard in the Court of Appeals 9 February 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Sondra Panico, for the State.

Jarvis John Edgerton, IV, for the Defendant.

DILLON, Judge.

¶ 1 Defendant Terry Wayne Harris appeals from judgments convicting him of two counts of incest, two counts of statutory rape, two counts of indecent liberties with a child, and two counts of first-degree kidnapping.

I. Background

¶ 2 "Jane"[1] was adopted when she was around ten years old by her biological aunt. Defendant is Jane's father. Defendant was indicted for a number of crimes based on alleged sexual encounters he had with his daughter when she was a young teenager, one of which resulted in his daughter becoming pregnant at the age of 14 years old.

¶ 3 Defendant filed a pretrial motion challenging the subject matter jurisdiction of the trial court, arguing that he was a "noble of the Al Moroccan Empire" and a "Moorish American." Defendant chose to represent himself during the proceedings, and standby counsel was appointed.

¶ 4 At trial, Defendant repeatedly refused the option to change into street clothes from his prison jumpsuit. He also did not allow the removal of his handcuffs or shackles. Defendant asked the trial court to allow his absence from the courtroom during the trial, which the trial court refused. The trial court ensured that Defendant understood that he had the right to be present during all proceedings.

¶ 5 The State put on a variety of witnesses: a psychiatrist, Jane's aunt, police officers, an adoption social worker, a pediatrician, and a DNA expert. The State, though, did not call Jane to testify.

¶ 6 The psychiatrist testified that Jane told him that she had been molested by her father and that her child was her father's child.

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[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b)(1).

¶ 7 Jane's aunt testified regarding statements Jane allegedly made to her concerning Defendant's abuse.

¶ 8 A special victim's unit detective ("SVU Detective") testified that Jane told him about Defendant's abuse. She told him of a time when Defendant took her into his van and told her to take her pants off and had sex with her. She told him that Defendant had sex with her every time she went to her mother's apartment. She said that when Defendant found out she was pregnant, he told her to get an abortion. The SVU Detective took DNA swabs from Jane and her baby.

¶ 9 An adoption social worker testified that she obtained a relinquishment of parental rights from Defendant as to Jane's baby. A child abuse and neglect pediatrician testified that Jane told her that her baby was Defendant's baby and that Defendant had repeatedly raped her.

¶ 10 Finally, a DNA expert testified that the probability that Defendant was the biological father of Jane's baby was 99.9999%.

¶ 11 Defendant never lodged any hearsay objections to any of the State witnesses' testimonies. At the conclusion of the trial, the jury found Defendant guilty on all counts. Defendant confirmed that he understood he had a right to appeal to our Court and exercised that right.

II. Analysis

¶ 12 Defendant makes several arguments on appeal. We address each in turn.

A. Competency Hearing

¶ 13 Defendant argues that the trial court erred when it failed to order a competency hearing *sua sponte* "in light of substantial evidence that Defendant was not mentally competent to stand trial." We disagree.

¶ 14 We review a trial court's decisions concerning a defendant's competency under the abuse of discretion standard. *State v. Staten*, 172 N.C. App. 673, 682, 616 S.E.2d 650, 656-57 (2005).

¶ 15 "A trial court has 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." *State v. Young*, 291 N.C. 562, 568, 231 S.E.2d 577, 581 (1977) (emphasis in original). We give deference to a trial court's determination of competency, but "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." *State v. Chukwu*, 230 N.C. App. 553, 562, 749 S.E.2d 910, 917 (2013) (internal quotation marks omitted).

¶ 16 Our Court has detailed some of the evidence relevant to a question of a defendant's competency:

> 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.

Staten, 172 N.C. App. at 678-79, 616 S.E.2d at 655 (internal quotation marks and citation omitted).

¶ 17 In reviewing the record, Defendant's actions never raised a bona fide doubt as to his competency. Defendant made motions to dismiss, made objections to the court's use of his legal name, allowed his stand-by counsel to review his pre-trial motion, indicated that he understood the right to appeal the judgment against him, and took advantage of his right to appeal.[2]

¶ 18 We note Defendant's insistence on remaining in prison uniform and shackles during the trial evidenced his refusal to put on a defense or participate in cross-examination. These actions, though, are consistent with Defendant's position throughout trial that he was a sovereign citizen and was, therefore, not subject to the jurisdiction of the trial court. Our courts have held that sovereign citizen arguments, in addition to being legally unmeritorious, do not equate to incompetency to stand

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[2] Our Supreme Court recently considered the same issue in *State v. Hollars*, ___ N.C. ___, 852 S.E.2d 135 (2020). However, in that case, the defendant had a lengthy history of mental illness, had appeared "psychotic and delusional" in prior evaluations, and had presented a "scattered and random thought process." *Id.* at ___, 852 S.E.2d at 137. He had been previously committed and appeared not to understand the trial proceedings. *Id.* at ___, 852 S.E.2d at 137, 140. Our Supreme Court affirmed our holding that the trial court committed error by failing to conduct a competency hearing as there was a bona fide doubt raised as to the defendant's competency. *Id.* at ___, 852 S.E.2d at 143.

trial. *See, e.g., State v. Newson*, 239 N.C. App. 183, 194, 767 S.E.2d 913, 919 (2015). And, here, the trial court found that Defendant's actions were consistent with his "obstructionist posture."

¶ 19 We, therefore, hold that the trial court did not abuse its discretion in not conducting a competency hearing *sua sponte*.

B. Hearsay

¶ 20 Defendant argues that the trial court erred, or plainly erred, when it allowed inadmissible hearsay statements into evidence from multiple witnesses. Because Defendant did not timely object to the alleged hearsay,[3] we review for plain error. N.C. R. App. P. 10(a)(4).

¶ 21 Plain error is defined as a "fundamental error . . . where the error is such as to seriously affect the fairness, integrity or public reputation of judicial proceedings or where it can be fairly said the instructional mistake had a probable impact on the jury's finding that the defendant was guilty." *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (internal quotation marks and citation omitted).

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[3] Defendant objected at the conclusion of State's evidence when it became clear that Jane would not testify. Our Court has held that a *pro se* defendant is held to the same standard at trial as one who is represented. *See State v. Brincefield*, 43 N.C. App. 49, 52, 258 S.E.2d 81, 83-84 (1979) ("When a defendant elects to represent himself in a criminal action, the trial court is not required to abandon its position as a neutral, fair and disinterested judge and assume the role of counsel or advisor to the defendant. The defendant waives counsel at his peril and by so doing acquires no greater rights or privileges than counsel would have in representing him.").

¶ 22 We hold that the trial court did not commit error, much less plain error. Specifically, Defendant has failed to show that the trial court had an affirmative duty to intervene *sua sponte* and strike hearsay testimony. It may be true that there was not sufficient evidence, apart from hearsay testimony, to convict Defendant for at least some of his crimes. But it is sometimes a matter of trial strategy for a defendant *not* to object to certain hearsay testimony offered by a witness for the State. Here, it would be reasonable trial strategy by Defendant not to object to hearsay testimony, fearing that the State would put Jane herself on the stand to testify about his abuse of her, testimony that might have been more damning to Defendant. In any event, "where hearsay is admitted without objection, it may be considered with the other evidence and given any evidentiary value which it may possess." *State v. Fuqua*, 234 N.C. 168, 170, 66 S.E.2d 667, 668 (1951).

C. Confrontation

¶ 23 Finally, Defendant argues that the trial court violated his constitutional right to confrontation when it allowed statements attributed to Jane into evidence without Jane testifying. We disagree.

¶ 24 Our courts have long held that "constitutional matters that are not raised and passed upon at trial will not be reviewed for the first time on appeal." *State v. Garcia*, 358 N.C. 382, 410, 597 S.E.2d 724, 745 (2004) (internal quotation marks omitted). Our rules of appellate procedure require that, for an issue to be preserved on appeal,

an appellant must obtain "a ruling upon the party's request, objection, or motion." N.C. R. App. P. 10(a)(1).

¶ 25 Defendant raised his Sixth Amendment confrontation argument at the beginning of trial when the State informed the trial court that it might call Jane to testify. The trial court did not rule on the objection due to its untimeliness. At the close of State's evidence, Defendant objected based on due process, but did not raise his earlier confrontation objection. Therefore, we do not review Defendant's confrontation argument, as it was not preserved.

III. Conclusion

¶ 26 We hold that the trial court did not abuse its discretion in not conducting a competency hearing *sua sponte*. Further, we hold that the trial court did not commit plain error in allowing alleged hearsay statements into evidence. Finally, we hold that Defendant's confrontation issue was not preserved for our review.

NO ERROR.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).