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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-55

Filed 21 November 2023

Wilson County, Nos. 18 CRS 50149-50

STATE OF NORTH CAROLINA

v.

KEYSHANE MONTEL SANDERS, Defendant.

Appeal by defendant from judgment entered 24 March 2022 by Judge Craig Croom in Wilson County Superior Court. Heard in the Court of Appeals on 5 September 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Jocelyn C. Wright, for the State.

Marilyn G. Ozer for Defendant-Appellant.

DILLON, Judge.

Defendant Keyshane Sanders was convicted by a jury of several serious felonies based on an incident when he sexually assaulted a woman. On appeal, Defendant argues there was substantial evidence before the trial court indicating Defendant may have been mentally incompetent at the time of trial. We agree.

I. Background

On 13 August 2018, a grand jury indicted Defendant for the shooting and

sexual assault of K.W.¹

Defendant's prior history of mental illness dates back to early childhood. On 12 February, 2018, a court-appointed forensic examiner evaluated Defendant and reported that Defendant lacked the necessary mental capacity to stand trial. Pursuant to the forensic report, Defendant was later committed for inpatient hospitalization at Cherry Hospital.

On 4 April 2019, Cherry Hospital reported that Defendant had regained the requisite mental capacity to stand trial, but with the following warning:

Notwithstanding, due to the chronic nature of schizophrenia, Mr. Sanders will require psychotropic medication and continued mental health treatment on a regular basis, regardless of the outcome of his criminal proceedings. Moreover, when Mr. Sanders returns to a correctional environment, he should continue to be provided with medical and mental health treatment for his identified conditions. His capacity could decompensate if he were to stop taking his psychotropic medication in the future. He would likely require another forensic evaluation if this were to occur.

Three years later, in March 2022, the case proceeded to trial. Defendant's behavior during trial prompted the trial court to inquire whether Defendant understood the charges against him, to which Defendant responded:

THE DEFENDANT: Not really, I don't. That's why I keep trying to get him the paper, I want to show it to you. I don't understand what they be saying. And this man ain't trying to fight for me. That's why I been trying to get another

¹ A pseudonym.

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lawyer, he ain't trying to fight.

THE COURT: Do you understand that you're here charged with attempted first-degree murder?

THE DEFENDANT: I don't know. I really don't.

THE COURT: What do you mean you don't know? Or you don't want to know. Tell me about that.

THE DEFENDANT: I don't really know what's going on. My mind is really messed up right now, man, and I don't even know.

THE COURT: Okay. Okay. Let me ask this question. Who is this person standing beside you?

THE DEFENDANT: My lawyer.

THE COURT: All right. What's his job? You just said it. What's his job?

THE DEFENDANT: He's supposed to be my lawyer. He's supposed to help me out.

Additionally, the Court asked Defendant about his mental health treatment:

THE COURT: Sir, if I may ask your client a question. Mr. Breen. Mr. Breen, you answer it for me. What medication is your client taking right now?

THE DEFENDANT: Zyprexa. They try to put me on Haldol and some other stuff but I don't take it because of the reactions and side effects but they gave me Zyprexa now.

THE COURT: Okay. All right.

THE DEFENDANT: Oh, yeah, and it's been discontinued too. Here in the jail, the jail discontinued it because I wasn't getting up when it come because it come so early.

THE COURT: Okay.

THE DEFENDANT: I try to get them to put me back on it though.

Despite this exchange, the trial court failed to require a competency hearing to determine whether Defendant was competent to stand trial. The trial proceeded, and on 24 March 2022, the jury found Defendant guilty of all counts.

During the sentencing phase of the proceedings, the trial court found the mitigating factor that Defendant was suffering from a mental condition that was insufficient to constitute a defense.

Defendant appealed in open court.

I. Analysis

The sole issue for review is whether the trial court erred by failing to conduct a *sua sponte* competency hearing at time of the trial. We review this alleged violation of Defendant's constitutional rights *de novo*. *State v. Ortiz-Zape*, 367 N.C. 1, 10, 743 S.E.2d 156, 162 (2013).

Under the Due Process Clause of the United States Constitution, “[a] criminal defendant may not be tried unless he is competent.” *Godinez v. Moran*, 509 U.S. 389, 396 (1993). This right is codified in N.C. Gen. Stat § 15A-1001(a) of our General Statutes, which provides that:

No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

N.C. Gen. Stat § 15A-1001(a) (2021).

As a result, “ ‘[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. King*, 353 N.C. 457, 467, 546 S.E.2d 575, 585 (2001) (emphasis in original). Substantial evidence which establishes a bona fide doubt as to a defendant’s competency may be established by weighing the factors given by the United States Supreme Court in *Drope*, which include “defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial.” *Drope v. Missouri*, 420 U.S. 162, 180 (1975).

North Carolina courts are not obligated to investigate a defendant’s competence solely based on evidence of pre-existing mental disability. *See State v. Allen*, 377 N.C. 169, 181-182. However, “the presence of any one of the factors . . . from *Drope* has the *potential* to give rise to a bona fide doubt as to the defendant’s competency in *some circumstances*.” *State v. Hollars*, 376 N.C. 432, 442, 852 S.E.2d 135, 142 (2020) (emphasis added).

In *State v. Hollars*, the North Carolina Supreme Court gave insight into the specific types of circumstances that, when viewed in totality with a defendant’s pre-existing mental health condition, amount to substantial evidence of a defendant’s incompetency:

In light of Defendant’s extensive history of mental illness, including schizophrenia, schizoaffective disorder, bipolar disorder, and mild neurocognitive disorder, his seven prior

forensic evaluations with divergent findings on his competency, the five-month gap between his competency hearing and his trial, the concerns expressed by physicians and other trial judges about the potential for Defendant to deteriorate during trial and warning of the need for vigilance, the concerns his counsel raised to the trial court regarding his conduct and demeanor on the third day of trial, and the fact that the trial court never had an extended colloquy with Defendant, we conclude substantial evidence existed before the trial court that raised a bona fide doubt as to Defendant's competency to stand trial. Therefore, the trial court erred in failing to institute *sua sponte* a competency hearing for Defendant.

Hollars, 376 N.C. at 440, 852 S.E.2d at 141.

Like *Hollars*, in this case, there was a significant time gap between Defendant's most recent competency evaluation and the start of the trial. Following Cherry Hospital's report detailing Defendant's newfound capacity to stand trial, defense counsel retained R.L. Etheridge, Ph.D. to assess Defendant. Dr. Etheridge issued Defendant's last competency evaluation prior to trial on 13 September 2021, stating that Defendant was capable of standing trial. However, trial did not commence until more than six months later, on 21 March 2022.

Additionally, the competency report from Cherry Hospital and the competency report from *Hollars* issued warnings about the possibility of mental decline, and each reporting physician made their determinations with specific caveats. Specifically, in *Hollars*, the evaluating physician

predicated his determination that defendant was competent to stand trial at the time . . . on two caveats: first, Dr. Bartholomew advised that defendant should be

housed at Broughton Hospital and transported to court each day for the duration of the trial . . . and second, Dr. Bartholomew noted that defendant's "condition may deteriorate with the stress of trial so vigilance is suggested if his case proceeds to trial."

Id. at 435-436, 852 S.E.2d at 138.

Here, the evaluating physician's report maintained that Defendant "should continue to be provided medical and mental health treatment for his identified conditions" and warned that Defendant's capacity "could decompensate if he were to stop taking his psychotropic medication in the future." Therefore, it was imperative that the trial court remain vigilant about Defendant's medication and take all necessary precautions to ensure a fair trial.

Finally, the defendant in *Hollars* and Defendant in this case both appeared considerably confused about what was happening during the trial. *See id.* at 438-440, 852 S.E.2d at 139-141. They both expressed their confusion to the trial court on multiple occasions. *Id.* In *Hollars*, the trial court attributed the defendant's apparent confusion to the complexity of legal proceedings. *Id.* Here, as in *Hollars*, whether Defendant's confusion was insincere or merely a response to complex legal jargon, given Defendant's medical history, the trial court had a duty to investigate the cause of Defendant's confusion. *Id.* at 442-43, 852 S.E.2d at 142-43.

A notable difference between *Hollars* and the present case is that in *Hollars*, the defendant's counsel raised the issue of competency on behalf of the defendant. *Id.* at 438, 852 S.E.2d at 139-40. Whereas in this case, when the trial court asked defense

counsel if he had “any concerns about [Defendant’s] ability to proceed in this case” or Defendant’s ability to understand and comprehend his ability to assist in his own defense, defense counsel replied, “I believe he has the ability to assist in his defense, Your Honor.” It is true that the court should grant “significant weight to defense counsel’s representation that a client is competent, since counsel is usually in the best position to determine if his client is able to understand the proceedings and assist in his defense.” *State v. Staten*, 172 N.C. App. 673, 678, 616 S.E.2d 650, 654 (2005). However, defense counsel’s representation of a defendant’s competency is merely one of many factors a trial court should consider when determining whether to initiate a *sua sponte* hearing. *See, e.g., Hollars*, 376 N.C. at 444, 852 S.E.2d at 143. Here, despite defense counsel’s representation, there was substantial evidence sufficient to raise a bona fide doubt regarding Defendant’s competency to stand for trial.

II. Conclusion

For the reasons discussed above, the trial court had a duty to conduct a *sua sponte* hearing into Defendant’s competency to stand trial. Accordingly, we remand this case to the trial court for a hearing to determine Defendant’s competency at the time of trial. *State v. McRae*, 139 N.C. App. 387, 392, 533 S.E.2d 557, 560-61 (2000).

VACATED AND REMANDED.

Judges MURPHY and THOMPSON concur.

Report per Rule 30(e).