



03/12/87 STATE TENNESSEE v. JOSEPH AMYORRO NNADI

1987 | Cited 0 times | Court of Criminal Appeals of Tennessee | March 12, 1987

JERRY SCOTT, JUDGE

The appellant was convicted of the aggravated rape of a five year old girl and received a sentence of twenty years in the state penitentiary as a Range I, standard offender. On appeal he has presented one issue. He asks whether the trial Judge erred by refusing to grant a continuance to allow him to be evaluated to determine his competency to stand trial.

The appellant's trial began on Thursday, March 13, 1986, when the jury and two alternates were chosen and sworn. The jury was respited at the end of the day "until the meeting of court tomorrow morning." For some reason not appearing in the record, the trial did not continue until the following Wednesday, March 19, at which time the minutes revealed that the appellant failed to appear for trial. However, the trial proceeded in absentia. Proof was presented, but the trial was not completed.

When court opened the next morning, the appellant was present. His counsel announced to the court:

May it please the Court, while the jury is still out and as officer of the court and as counsel for Mr. Nnadi, at this point in time, on behalf of Mr. Nnadi and as his counsel and under the provisions of *Droup v. Missouri*, a United States Supreme Court case, and also subsequent cases -- I believe one is *Stacy v. State of Tennessee* -- I have a concern based on my conversations with Mr. Nnadi as to presently whether or not he fully comprehends, one, the status of the case and, secondly, the consequences of this case.

I'm not a psychiatrist. I have no medical proof to offer or tender to the Court. I think, however, by virtue of my many conversations with him, particularly my conversation with him on Monday -- it just so happened last evening when he was brought into the booking room to be served with a capias -- I had some concern relative to his demeanor and behavior, the way he conversed with me and so forth. I also talked with him this morning. And I still have some concerns as to whether or not he fully comprehends, not necessarily the nature of the charge, but if he comprehends today why he's here and the possible consequences of his being here and also his ability to fully relate to be and also participate in his defense.

I point that out to the Court because I think, one, I have an obligation to do that, and I've discussed that with him, and from reading the cases. We're not asking that an examination be made of him to determine competency at the time of the alleged offense as opposed to his present competency today to adequately advise counsel in his defense.



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The court responded to counsel:

Well, I understand what you're saying. He's free, and you're free, to arrange whatever examination you want of him at any time. You're not asking the Court to take care of any examination. He was on bond up to a few hours ago, and you're privately retained. So whatever you do with regard to an examination is certainly up to you. And I would consider it when presented, and if presented in a proper way, for whatever appropriate decisions that are to be made. Without it, though, I don't see any reason to stop or to change the course of the trial at this point.

Anything further?

At that point defense counsel moved for a continuance, so the appellant could be examined to determine his ability to continue with the trial.

The trial Judge overruled the motion, stating as follows:

All right. I'll overrule the motion based on the fact that I find that he has done everything imaginable to avoid this day, to avoid being here, to avoid the trial. And as a matter of fact, the trial began with him, continued without him, and now we have him again. So I think he has been involved in schemes and plans, unknown to his lawyer, to thwart the progress and process of this trial. And I will certainly not continue it at all for any reason other than some more compelling reason. This reason is not compelling in the sense that I have no proof whatsoever of his condition. He sits there. I don't know the circumstances surrounding his arrest on this capias. At all times heretofore he has exhibited himself as being rational. Whether his choices and decisions are wise, that's not my business. But unless he is laboring under some extremely severe disability at this point, then he's free to have an examination at any time that he can arrange it.

The trial continued and the last three witnesses for the prosecution were heard. The appellant then testified, denying his guilt and also presented one witness in his behalf.

At the hearing on the motion for a new trial, the appellant presented the testimony of Dr. Patricia Maynard, a physician with two years of residency training in anesthesiology and one year of residency training in psychiatry. She interviewed the appellant the night after the verdict was returned. She testified that in her opinion the appellant "was unable to assist counsel in preparation for his defense secondary to a depressive disorder. And the symptoms of this oppressive disorder were poor attention span, impaired concentration, impaired judgment and memory and also he had a pervasive quality of indecisiveness."

She further testified that his condition would have been in effect at least three days prior to the date that she saw him. In her written report the doctor stated that her findings were consistent with DSM III criteria for "Major Depression # 290 (single episode)."



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The doctor admitted that she was a casual acquaintance of the appellant, having known him socially for approximately three years. She noted that he is an intelligent man, but that he would have difficulty in relating to counsel, apparently because of language barriers. She expected that he would also have some difficulty in recalling events of the distant past. Her opinion was based upon what she learned in approximately one hour with the appellant.

In overruling the motion for a new trial, the trial Judge recalled the appellant's testimony and noted that he did not say "anything whatsoever which would lead the Court to question his mental condition."

Unlike the trial Judge, we have not had the advantage of seeing the appellant's live testimony. However, we have an advantage over the trial Judge in that we have the written transcript of his testimony. Like the trial Judge, we find that his testimony was extremely clear and cogent. In his testimony the appellant recounted his two years of college and how he worked at a number of different jobs in Nashville. He explained his absence from the trial by stating that he went to get food stamps and presented documentary evidence of his application to the Department of Human Services.

At common law it was required that a defendant be mentally competent in order to be put to trial. Statutes to that effect enacted in some jurisdictions are simply declaratory of the common law. *Jordan v. State*, 124 Tenn. 81, 135 S.W. 327, 328 (1911), citing *Blackstone's Commentaries*, Vol. 4, pp. 24, 396. To be competent the defendant must be able to understand the nature and object of the proceedings against him, be able to consult with counsel and to assist in the preparation of his defense. *Mackey v. State*, 537 S.W.2d 704, 707 (Tenn.Cr.App. 1975), citing *Drope V. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975), and *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966).

Normally, questions of competency are raised prior to trial but can be considered "at any time while criminal proceedings are pending" if sufficient facts are presented or observed by the trial Judge to raise a doubt as to "the then sanity" of the accused. *Cogburn v. State*, 198 Tenn. 431, 281 S.W.2d 38, 39 (1955), quoting *State v. Sullivan*, 229 N.C. 251, 49 S.E.2d 458, 460 (1948). The Supreme Court noted even an appellate court can, on its own motion, institute an investigation of an accused's sanity, as was done in *Green v. State*, 88 Tenn. 634, 14 S.W. 489 (1890), *Id.*, 281 S.W.2d at 40. In *Green*, the Supreme Court even conducted its own independent investigation outside the record by getting an opinion from a "preeminently distinguished ... expert in diseases of the mind."

When a person charged with a criminal offense is believed to be incompetent to stand trial, the trial court has the power to order an evaluation. T.C.A. § 33-7-301(a). This statute vests the trial Judge with discretion to order a mental evaluation of the accused. *State v. Robinson*, 622 S.W.2d 62, 72 (Tenn.Cr.App. 1981). Like other issues involving the trial Judge's discretion, the question on appeal is whether he abused that discretion.



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In this case the issue arose through the statements of counsel which are not evidence, unless made under oath as a witness. Unless so made, such statements prove nothing. *Trotter v. State*, 508 S.W.2d 808, 809 (Tenn.Cr. App. 1974). Of course, such statements may alert the trial Judge to the need to hear proof or to otherwise pursue the question. Later, the appellant presented the testimony of a doctor who is a resident in psychiatry, but who is not a psychiatrist. Her diagnosis of # 290 from DSM III indicates that he is suffering from senile and pre-senile organic psychotic conditions. Diagnostic and Statistical Manual of Mental Disorders, 3d ed., p. 446. That is indeed unusual for a person who was twenty-nine years old at the time.

Furthermore, as the trial Judge noted, the doctor was a friend of the appellant and her testimony may have been tempered by their friendship. As the state notes in its brief, her testimony "translated into everyday English" shows that the appellant was "inattentive, indecisive and depressed."

In *State v. Lane*, 689 S.W.2d 202, 203-204 (Tenn. Cr.App. 1984), this Court held that there was no abuse of discretion when the trial Judge overruled pretrial and mid-trial motions for a psychiatric evaluation. In that case it was alleged by affidavit that the defendant suffered from prior mental illness for which he had been confined to a mental hospital in the State of Florida, and that he had also had brain surgery. A psychological examiner testified that he was "worthy" for further evaluation to determine the extent, if any, of his mental instability. Defense counsel asserted that he had been given inconsistent descriptions of the criminal episode and that the defendant had attempted suicide by scratching his wrists with disposable razors.

This Court held that the trial Judge did not abuse his discretion in that case. Indeed, the facts presented in this case show far less justification for a continuance for an examination than were present in *Lane*. As the trial Judge noted, it is clear that this appellant simply did not want his trial to proceed. There was no reason to order a continuance and a mid-trial psychiatric examination.

CONCUR: MARTHA CRAIG DAUGHTREY, JUDGE, LLOYD TATUM, SPECIAL JUDGE.

