

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Georgetown County

RECEIVED

Honorable D. Craig Brown, Circuit Court Judge

AUG 01 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STANLEY DELANOR MOULTRIE,

APPELLANT

APPELLATE CASE NO 2016-001830

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's criminal responsibility?

II.

Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's competency to stand trial?

STATEMENT OF THE CASE

On May 27, 2015, the Georgetown County Grand Jury returned indictments for armed robbery, kidnapping, and possession of a weapon during a violent crime against Appellant Stanley Moultrie in connection with the January 20, 2015 robbery of a Shoe Show Store. Prior to selection of the jury, the solicitor nolle prossed the weapons charge. Tr. 49, l. 24 – 51, l. 2; R.* (burglary indictment).

On August 22-24, 2016, Moultrie appeared for trial before the Honorable D. Craig Brown and a jury. Moultrie was represented by Jeffrey T. Lucas, III, and the State was represented by assistant solicitor James Austin Thomas. Tr. 1. At the outset of the case, defense counsel made a motion for a mental health evaluation, which was denied by the trial court. Tr. 8 – 44.

The jury returned a verdict of guilty on the charge of armed robbery and a verdict of not guilty on the charge of kidnapping. Tr. 267. Judge Brown imposed a mandatory sentence of life without parole, finding that the state properly noticed Moultrie of its intention to seek life without parole pursuant to the recidivist statute. Tr. 272 – 273; see S.C. Code Ann. § 17-25-45.

This appeal follows.

STATEMENT OF FACTS

Moultrie was accused of robbing a Shoe Show store on January 20, 2015. According to the Clerk, a black male wearing glasses, a blue cap, and a blue jumpsuit came in shortly after she unlocked the doors at 9:30 a.m. When she offered to help find something, he gave her a size ten and a half shoe and asked her to see if it was available in a size thirteen. When she turned around to go call another store to see if the shoe was available, the man grabbed her neck and pulled out a knife. She gave him the money from both cash registers, told her not look at him, and left. Tr. 23, l. 13 – 26, l. 12. Police obtained surveillance footage from the nearby Wal-Mart and CATO stores, which were low quality but showed a black male and dark car. Tr. 135 – 156. Through collaboration with Charleston officers, the officers determined that Moultrie owned a similar looking car to the one used by the robber. Tr. 156, l. 17 – 157, l. 14; Tr. 175, l. 2 – 184, l. 11. A search warrant was executed of Moultrie's house, yielding a blue jumpsuit, glasses, multiple size thirteen shoes, and cash. Tr. 157, l. 10 – 166, l. 5. The cashier from Shoe Show was subsequently shown a six person line-up and identified Moultrie as the robber. Tr. 126, l. 12 – 128, l. 6; Tr. 166, l. 6 – 167, l. 20. Police further obtained Moultrie's cell phone records and averred that he was in the vicinity of Shoe Show at the time of the robbery. Tr. 203, l. 8 – 214, l. 18.

The defense made a pre-trial motion requesting that Appellant Moultrie be evaluated for both criminal responsibility and competency. Tr. 8, l. 9 – 14, l. 10. Defense counsel explained that he worked for the law firm of Axelrod and Associates and that Moultrie's case was one of the first assigned to him when he began in January 2016. He learned from Mr. Axelrod that Moultrie's prior attorney, Leon Parrot, had "expressed some concern about Mr. Moultrie's mental status." Tr. 8, l. 9 – 9, l. 4. Defense counsel met with Moultrie in February 2016 and

believed then that “there is something wrong with Stanley Moultrie” that only a doctor can diagnose. Tr. 9, l. 4 – 14, l. 10.

Following a prior competency hearing in May 2016 in Horry County, counsel was permitted to withdraw his motion without prejudice and attempt to collect more information. Tr. 11, l. 9-19. Counsel immediately requested the Moultrie’s medical records from the South Carolina Department of Corrections (“SCDC”), looking specifically for references to the mental health treatment that Moultrie received during his prior incarcerations in SCDC. He presented a 2009 SCDC “Health Summary for Classification/Assignment” form, which indicated that Moultrie needed “outpatient mental health” treatment and an institutional placement with “daily nursing coverage.” R. * (Court’s Ex. 2, health summary). Counsel was unable to procure any records related to the specific treatment received or any diagnosis. Tr. 11, l. 20 – 12, l. 16; Tr. 28, l. 6 – 29, l. 14; Tr. 35, l. 5 – 37, l. 12. Defense counsel also provided the Court will letters written by Moultrie to the solicitor’s office, describing the sexual abuse that he experienced at the hands of his physical education teacher when he was thirteen years old. Tr. 12, l. 17 – 13, l. 11; R. * (Court’s Ex. 3, letter to solicitor from defendant).

The solicitor presented testimony from Joann Clarey, a classification lieutenant at the Georgetown County Detention Center. She said that there were no special accommodations made for Moultrie, she had not observed any “bazaar or irrational behavior” from him, and she had no difficulty communicating with Moultrie. However, she admitted that she had no medical training. Tr. 17, l. 15 – 21, l. 17. Judge Brown also reviewed the video interrogation of Moultrie, which took place several weeks after the alleged offense. Tr. 22, ll. 1-11; Court’s Ex. 1, DVD statement of defendant (on file with this Court). Judge Brown then questioned Moultrie

about his age, education, work history, past mental health treatment and knowledge related to criminal proceedings. Tr. 22 – 34.

Moultrie was forty-nine years old at the time of trial, a high school graduate, and had worked as a courier, cook, and in a warehouse. Prior to his arrest, he lived with his wife, to whom he was married in 2001. Tr. 22, l. 23 – 23, l. 25. Moultrie said that in addition to the mental health counseling he received in SCDC, he received counseling while in the Army. He was discharged and unable to seek reenlistment until he sought “further help” for his “condition.” Moultrie had also requested mental health treatment while in the local detention center, which he said should be documented. Moultrie indicated that he was currently prescribed anti-depressants Wellbutrin and Effexor, and had previously been prescribed anti-psychotic Seroquel.¹ Tr. 24, l. 1 – 27, l. 9. Defense counsel confirmed that the medications referenced were listed in the medical records he obtained from SCDC. Tr. 27, l. 10 – 29, l. 14. Regarding the criminal process, Moultrie said he had been incarcerated twice before. He indicated that the attorneys for the state’s job was to prosecute and his attorney’s job was to defend him. Moultrie said that defense counsel had met with him twice for fifteen to twenty minutes each time, but counsel interjected that they had met three times. However, Moultrie said that they did not go

¹ VALEANT, WELLBUTRIN XL FULL PRESCRIBING INFORMATION 1 (Dec. 2014), <http://www.valeant.com/Portals/25/Pdf/PI/Wellbutrin-XL-PI.pdf> (“WELLBUTRIN XL is an aminoketone antidepressant, indicated for the treatment of major depressive disorder (MDD) and prevention of seasonal affective disorder (SAD).”); PFIZER, INC., EFFEXOR XR FULL PRESCRIBING INFORMATION 1 (Mar. 2017) <http://labeling.pfizer.com/showlabeling.aspx?ID=100> (“Effexor XR is a serotonin and norepinephrine reuptake inhibitor (SNRI) indicated for the treatment of: Major Depressive Disorder (MDD), Generalized Anxiety Disorder (GAD), Social Anxiety Disorder (SAD), Panic Disorder (PD)”); ASTRAZENECA, SEROQUEL XR FULL PRESCRIBING INFORMATION 1 (Feb. 2017), <https://www.azpicentral.com/seroquel-xr/seroquelxr.pdf#page=1> (“SEROQUEL XR is an atypical antipsychotic indicated for the treatment of schizophrenia (1.1), Bipolar I disorder, manic or mixed episodes (1.2), Bipolar disorder, depressive episodes (1.2),¹ Major depressive disorder, adjunctive therapy with antidepressants (1.3)”).

over the state's evidence against him and believed that he had to prove his innocence. Tr. 29, l. 15 – 31, l. 10. Defense counsel said that Moultrie appeared to understand their discussions and could not recall a specific time that Moultrie was unable to assist him. However, counsel averred that Moultrie did not appreciate whether his conduct at the time of the alleged offense was right or wrong. Tr. 31, l. 11 – 32, l. 21.

Judge Brown took a brief recess to consider the evidence and case law. He returned and asked Moultrie if he understood the charges and potential penalties, to which Moultrie responded that he did.² Tr. 42, l. 9 – 43, l. 3. Defense counsel agreed that Moultrie understood such, but argued “as his mental state at the time they were committed, we don't know. That's what we're here for, Your Honor, to make that determination.” Tr. 43, ll. 9-13. Judge Brown denied the motion for evaluation, focusing primarily on the competency to stand trial component to the requested evaluation. Tr. 44, l. 1 – 47, l. 20. Counsel noted his “exception” to the court's ruling and renewed his objection throughout the trial. Tr. 47, ll. 21-24; Tr. 216, ll. 2-4; Tr. 227, ll. 19-21; Tr. 273, ll. 16-18.

² There was no mention of the mandatory nature of the life without parole sentence in light of the State's service of the LWOP notice. Tr. 42, l. 9 – 43, l. 3; see Tr. 14, ll. 14-15.

ARGUMENT

I. The trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's criminal responsibility.

The purpose of defense counsel's request for a mental health evaluation was twofold, as he sought an evaluation to address both Moultrie's criminal responsibility and his competency to stand trial. Tr. 13, l. 24 – 14, l. 1. "The test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time the defendant is before the court for trial." Monahan v. State, 365 S.C. 130, 133, 616 S.E.2d 422, 423 (2005). "The trial judge has the discretion to order a mental health evaluation where the defendant indicates an intent to introduce evidence at trial that he lacked criminal responsibility." Id. at 133, 616 S.E.2d at 424. Such an evaluation would have been relevant to a guilty but mentally ill or insanity defense.

"It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." S.C. Code Ann. § 17-24-10(A). A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law." S.C. Code Ann. § 17-24-20(A). A verdict of guilty but mentally ill ("GBMI") does not absolve a defendant of guilt. State v. Hornsby, 326 S.C. 121, 126, 484 S.E.2d 869, 872 (1997). Rather, a defendant

found GBMI is sentenced as provided by law for a defendant found guilty, but under the GBMI statute is entitled to immediate treatment and evaluation. Id.

Here, Moultrie's attorney requested the evaluation in order to determine his criminal responsibility. Moultrie's level of functioning during his interrogation weeks after the alleged incident provided no support for the denial of the evaluation, as the test for criminal responsibility relates to the time of the alleged offense. See Monahan, 365 S.C. at 133, 616 S.E.2d at 423. Defense counsel presented evidence that Moultrie was sexually abused as a child and had been referred for outpatient mental health treatment during his past incarceration. R. * (Court's Ex. 3, letter to solicitor from defendant); R. * (Court's Ex. 2, health summary). Moultrie also testified about his discharge from the army related to mental health problems and about the anti-depressant and anti-psychotic medications he had been prescribed in the past and at the time of the trial. Tr. 24, l. 1 – 29, l. 14. This was sufficient to warrant that a mental health evaluation be conducted so that defense counsel could determine whether there existed a valid GBMI or insanity defense. By failing to order the requisite evaluation, the trial judge prevented Moultrie from pursuing both of these potential defenses.

II. The trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's competency to stand trial.

An individual's constitutional right to due process of law, as provided in the Fourteenth Amendment to the United States Constitution, prohibits the conviction of an incompetent defendant. Medina v. California, 505 U.S. 437, (1992); Drope v. Missouri, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375 (1966). Therefore, states must provide procedures adequate to protect this right. Pate, 383 U.S. at 378. South Carolina law provides that whenever a judge "has reason to believe that a person on trial before him, charged with the commission of a criminal act ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or assistant in his own defense as a result of lack of mental capacity," the judge shall order an examination of the individual by the Department of Mental Health. S.C. Code Ann. § 44-23-410. The test for determining competency to stand trial is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." State v. Weik, 356 S.C. 76, 81, 687 S.E.2d 683, 685 (2002) (citing Dusky v. United States, 362 U.S. 402 (1960)); State v. Bell, 293 S.C. 391, 395-396, 360 S.E.2d 706, 708 (1987).

In State v. Singleton, 322 S.C. 480, 472 S.E.2d 640 (Ct. App. 1996), this Court held that the probation revocation judge's failure to order competency evaluation was an abuse of discretion. In determining that the trial judge had reason to believe that a competency examination was necessary, this Court cited to trial counsel's report that Singleton suffered symptoms suggestive of schizophrenia and was under psychiatric care at the time of the hearing, along with his mother's testimony regarding the seriousness and duration of his mental problems. 322 S.C. at 483, 472 S.E.2d at 642. The Court further noted the trial judge's statement at the conclusion of the hearing that indicated his belief that Singleton needed

additional treatment for his mental condition. Id. Moreover, regardless of the precise argument articulated by trial counsel, the statute imposes a duty upon the trial court to order such an examination on its own motion “‘whenever a Circuit Court ... has reason to believe’ a defendant may lack the mental capacity necessary to stand trial.” Id. at 483 n. 3, 472 S.E.2d at 642 n. 3.

Here, Moultrie averred that he had been incarcerated twice before, but there was no inquiry about whether he had been through a trial previously. The sentencing sheets admitted related to Moultrie’s prior convictions both reflect that those convictions were the result of guilty pleas. R.* (Court’s Ex. 4, prior indictments and accompanying documents). Further, while Moultrie responded that he understood the general role of the prosecution and defense counsel, he believed that it was his burden to prove his innocence. He also said that he met with a defense counsel for a total of one hour over the span of three visits and that defense counsel did not go over the evidence against him. Tr. 29, l. 15 – 31, l. 10. While counsel indicated that he was generally able to communicate with Moultrie, it was obvious from the totality of the proceedings that Moultrie was able to provide only limited information regarding his mental health history, though it appeared to be extensive and dated back to his time in the military. Notably, the trial judge included on the sentencing sheet that Moultrie should receive mental health treatment as deemed necessary. Tr. 272, ll. 4-6; R. * (sentencing sheet). It was thus incumbent upon the trial judge to order the competency evaluation so that a medical professional could determine whether Moultrie understood the proceedings against him and whether he could assist in his own defense as a result of lack of mental capacity.

CONCLUSION

Based on the foregoing, Appellant Stanley Delanor Moultrie respectfully requests that this Court reverse his conviction and grant him a new trial.

A handwritten signature in black ink that reads "Laura R. Baer". The signature is written in a cursive style with a horizontal line underneath it.

Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of August, 2017.

STATE OF SOUTH CAROLINA

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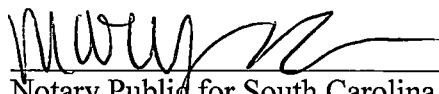
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Stanley Delanor Moultrie, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 1st day of August, 2017.



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of August, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027