STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Calhoun County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES WINSTON, JR.,

APPELLANT

APPELLATE CASE NO 2016-001029

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

At this bench trial, did the trial judge err in refusing to find Appellant guilty but mentally ill when the State only evaluated Appellant for competency to stand trial and the only evidence in regard to criminal responsibility came from the forensic psychiatrist, called by the defense, who testified that Appellant suffered from a delusional disorder which impaired his ability to conform?

STATEMENT OF THE CASE

On October 24, 2014, the Calhoun County Grand Jury indicted Appellant Winston for attempted murder, indictment #2014-GS-09-260. On May 9, 2016, Appellant proceeded to a bench trial before the Honorable Maite Murphy. Martin R. Banks represented Appellant at the bench trial. Theodore N. Lupton prosecuted the case. Judge Murphy found Appellant guilty and sentenced him to thirty (30) years in prison. A timely notice of intent to appeal was served on May 12, 2016. This appeal follows.

ARGUMENT

At this bench trial the trial judge erred in refusing to find Appellant guilty but mentally ill when the State only evaluated Appellant for competency to stand trial and the only evidence in regard to criminal responsibility came from a forensic psychiatrist, called by the defense, who testified that Appellant suffered from a delusional disorder which impaired his ability to conform.

On Monday May 9, 2016, trial counsel waived Appellant's presence and advised the judge that Appellant wished to waive his right to a jury trial and proceed with a bench trial.[1] (R. pp. 4-7). At this time trial counsel also stipulated that Appellant was competent to stand trial. (R. p. 4, lines 10-20). A copy of the State ordered competency evaluation was marked as both Court's Exhibit #1 and State's Exhibit #1. (R. p. 5, lines 2-3; p. 8, lines 7-10; R. pp. 135 – 145). The State ordered competency evaluation did not address capacity to distinguish right from wrong or capacity to conform conduct to the requirements of law. On May 11, 2016, Appellant proceeded to a bench trial, stipulating to the facts alleged in the indictment but presenting mental health defenses. (R. p. 8, lines 2-13). The indictment alleges that on September 30, 2014, Appellant did, with the intent to kill, attempt to kill Courtney Glover with malice aforethought by cutting her throat and face area. (R. p. 9, lines 4-12, R. pp. 132 – 133). Ms. Glover testified that Appellant was a neighbor who she had known since she was fourteen. (R. p. 10, lines7-11). On the night in question she went to Appellant's house because he had texted her and stated that he needed someone to talk to. (R. p. 12, line 23 – p. 13, lines 1-6). Ms. Glover testified that Appellant attacked her as she was leaving his house. (R. p. 14, lines 2-13).

Appellant called Dr. Amanda Salas as an expert witness in forensic psychiatry. (R. pp. 37-94). Dr. Salas testified that Appellant suffered from a delusional disorder. (R. p. 38, lines

[1] The record does not contain a waiver from Appellant in regard to his right to a jury trial. This issue may need to be raised in post-conviction relief.

18-23). Dr. Salas testified that Appellant believed that the victim and others placed devices in his body that they could control remotely to torture him. (R. p. 40, line 10 – p. 41, lines 1-8; p. 43, lines 14-17). Dr. Salas testified that Appellant could tell the difference between legal right and wrong. (R. p. 61, lines 22-23). The doctor testified, however, that the delusional disorder "impaired his ability not only to discriminate a moral right from wrong, but also the inability to conform." Although Appellant stipulated that he was competent to stand trial, the doctor was of the opinion that Appellant was not competent to stand trial. (R. p. 77, line 17 – p. 78, lines 1-2).

Trial counsel argued that Appellant was not guilty by reason of insanity. (R. pp. 106-107). The State argued that Appellant did not prove that he was not guilty by reason of insanity but told the judge, "I would submit that at most there is a question as to whether or not he had the capacity to conform his acts. And at most, this is guilty but mentally ill." (R. p. 117, lines 16-19). The judge found Appellant guilty rather than guilty but mentally ill or not guilty by reason of insanity. (R. p. 123, lines 2-3). The judge found that Appellant failed to establish that he was not guilty by reason of insanity. (R. p. 118, line 19 – p. 119, 120, 121, lines 1-15). In regard to guilty but mentally ill the judge stated:

> The only time the defendant has sought prior treatment for any alleged condition is because of judicial enforcement. There are no fact witnesses regarding past or current condition to show sufficient evidence that at the time of the attack he lacked sufficient capacity to conform his conducts to the requirements of the law. Dr. Salas actually testified that he knew legal right from legal wrong. And the mental illness has not been established. The defendant's conduct contradicts this on every stage of this trial. He clearly is intelligent, articulate, and I think, quite frankly, he knew his only defense to mitigate or escape his responsibility for these heinous acts are to allege that he was hearing voices in order to escape liability for his actions. Therefore, the Court finds the defendant guilty of attempted murder.

The trial judge erred. Dr. Salas testified that Appellant suffered from a delusional disorder which impaired his ability to conform. The State ordered competency evaluation does

not address ability to conform but notes prior diagnoses for depressive disorder and alcohol-induced psychotic disorder. If this case had been tried before a jury, the trial judge would have erred in not giving the jury the option of finding Appellant guilty but mentally ill. See State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990).

In State v. Curry, 410 S.C. 46, 52–53, 762 S.E.2d 721, 724–25 (Ct. App. 2014) (fn. #3 omitted), the South Carolina Court of Appeals wrote:

> As defined by section 17–24–20(A) of the South Carolina Code (2014), 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 [s]ection 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) (2014). The guilty but mentally ill statute ensures the jury applies the legal definition of insanity properly by emphasizing that a person may be mentally ill, yet not legally insane. State v. Hornsby, 326 S.C. 121, 130, 484 S.E.2d 869, 874 (1997). "The [guilty but mentally ill] verdict clarifies the distinction between a defendant who is not guilty by reason of insanity and one who is mentally ill yet not criminally insane and, therefore, is criminally liable." Id.

The burden of proof is on the defendant to prove by a preponderance of the evidence that at the time of the crime he was mentally ill. S.C. Code Ann. § 17-24-20(B). Appellant established by a preponderance of the evidence that he was mentally ill, suffering from a delusional disorder, and because of that mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law. This is not a case where there was contradictory evidence in regard to capacity to conform. The State presented no evidence in regard to Appellant's capacity to conform. The only evidence before the judge was Dr. Salas' testimony that because of Appellant's delusional disorder, he lacked the capacity to conform.

The judge's findings of fact in regard to refusing to find Appellant guilty but mentally ill are not supported by the record. When reviewing an action at law, on appeal of a case tried

without a jury, this Court will not disturb the judge's findings of fact "unless found to be without evidence which reasonably supports the judge's findings." Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). The only testimony presented in this case supports a finding of guilty but mentally ill. The State presented no evidence to contradict this finding and in fact conceded "... that at most there is a question as to whether or not he had the capacity to conform his acts. And at most, this is guilty but mentally ill." (R. p. 117, lines 16-19).

At the close of the case the trial judge stated, ""And I suppose, I guess, as far as the defendant is concerned, if he truly does need medical attention while he is incarcerated, whether it's guilty but mentally ill or just guilty, the Department of Corrections is required to provide mental health treatment while he is incarcerated regardless." (R. p. 130, liens 8-13). As noted by the Court in Curry:

> We are aware that a defendant found guilty but mentally ill "must be sentenced as provided by law for a defendant found guilty." Hornsby, 326 S.C. at 126, 484 S.E.2d at 872. Although a defendant's sentence is the same regardless of whether he is merely guilty or guilty but mentally ill, a defendant found guilty but mentally ill "is entitled to immediate treatment and evaluation." 726 Id. (citing S.C.Code Ann. § 17–24–70 (Supp.1995)). The circuit court included a recommendation for mental health treatment when it issued Curry's sentence, but the court did not mandate treatment as is required for a defendant found guilty but mentally ill pursuant to section 17–24–70 of the South Carolina Code (2014). Because evidence was presented from which the jury could have concluded Curry was guilty but mentally ill under section 17–24–70, the circuit court's failure to include this jury charge amounted to reversible error.

410 S.C. at 54–55, 762 S.E.2d at 725–26 (Ct. App. 2014) (footnotes omitted). The only evidence presented in the present case supported a finding of guilty but mentally ill which would have mandated immediate treatment and evaluation within the Department of Corrections. The trial judge erred in refusing to find Appellant guilty but mentally ill. The error requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse Appellant's conviction and remand the case for a new trial.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 29, 2017

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief in the above referenced case has been served upon V. Henry Gunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of March, 2017.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of March, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2025