

STATE OF SOUTH CAROLINA
In The Supreme Court

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On Writ of Certiorari to the Court of Appeals

AUG 20 2018

Appeal from Calhoun County
Court of General Sessions

S.C. SUPREME COURT

The Honorable Maite Murphy, Circuit Court Judge

Opinion No. 2018-UP-198 (S.C. Ct. App. filed May 9, 2018)
Appellate Case No. 2018-001335

THE STATE,

RESPONDENT,

v.

CHARLES WINSTON, JR.,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON APPEAL

The Court of Appeals correctly found that at the conclusion of Petitioner's bench trial, the trial judge properly found Petitioner guilty where he failed to present sufficient credible evidence to prove by a preponderance of the evidence that he was guilty but mentally ill.

STATEMENT OF THE CASE

Procedural History

Petitioner was indicted during the December 2014 term of the Grand Jury for Calhoun County for attempted murder (2014-GS-09-0260). Petitioner proceeded to a bench trial before the Honorable Maite Murphy on May 9, 2016. Judge Murphy found Petitioner guilty as indicted and sentenced him to imprisonment for a term of thirty years. lewd act on a minor, with the probation to begin at the end of the seven year sentence.

On May 9, 2018, the South Carolina Court of Appeals unanimously affirmed Petitioner's conviction and sentence. State v. Winston, Op. No. 2017-UP-198 (S.C. Ct. App. filed May 9, 2018). Petitioner subsequently submitted a petition for rehearing, which was denied on June 22, 2018. Petitioner timely submitted a Petition for Writ of Certiorari and this Return follows.

Factual History

Courtney Glover was Petitioner's neighbor and had known him since she was fourteen years old. R. p. 10. On September 30, 2014, Petitioner texted Glover saying he needed someone to talk to. Tr. p. 12. Petitioner told Glover to come over after she finished working that day. R. p. 13. Glover subsequently went to Petitioner's house and asked him, "Well, what's wrong? What do you want to talk about?" R. p. 13. Petitioner vaguely stated, "You wouldn't understand. You know, I have a lot going on. I have a lot, you know, on my mind." R. p. 13. Glover remained at Petitioner's home for five more minutes before telling him she needed to leave. R. p. 13. Petitioner then stated he needed to go to the bathroom first. R. p. 13. After Petitioner returned from the bathroom, Glover asked him to walk her to her car. R. p. 13.

As Glover walked outside, Petitioner turned the carport light off and jumped on Glover. R. p. 14. Glover noted that although she did not notice it initially because of the adrenaline,

Petitioner managed to cut her neck. R. p. 15. Glover tried to get away from Petitioner; however, he managed to pin her down and was trying to cut her throat again. R. p. 15. Glover stated Petitioner missed her neck and cut her face instead. R. p. 15. Glover elbowed Petitioner in an effort to get free and ran to her car which was located in the driveway. R. p. 15.

Glover climbed into her car and attempted to start the car with the push start button. R. p. 15. Petitioner chased after Glover and prevented her from closing the door. R. p. 15. Each time Glover attempted to start her car by pushing the button, Petitioner turned off the car. R. p. 15. Petitioner continuously yelled at Glover "You're not going anywhere." R. p. 15. Eventually Glover was able to start her car and attempted to drive off while Petitioner refused to let go of her car door. R. 16. Glover managed to drive her car to her house while Petitioner held on to the door. R. p. 16. Glover pulled into her front yard and began to honk the horn in an attempt to alert her family members to her situation. R. p. 16. Petitioner then cursed and tried to stab Ms. Glover one last time. R. p. 16. Once Glover's mother ran out of her home, Petitioner fled the scene. R. p. 17. Glover was ultimately transferred to the hospital via ambulance due to the loss of blood. R. 17. Glover stated that while she was inside Petitioner's home, Petitioner's conduct did not lead her to believe he was not rational. R. p. 13. Glover also noted she believed Petitioner understood the difference between right and wrong. Glover further commented that in the many years she has known Petitioner, there is nothing she has seen in him that would cause her to believe he did not know right from wrong. R. pp. 18-19.

Captain Pat Regalis of the Calhoun County Sheriff's Office responded to the scene on the evening of September 30, 2014. R. p. 24. Captain Regalis noticed there was a spot next to the steps of the home that was recently washed and had a bucket placed next to the area. R. p. 25. Regalis also observed there was a little residue remaining that looked like blood. R. p. 25.

Petitioner was subsequently arrested in Orangeburg on October 8, 2014. R. p. 26. Petitioner was returned to Calhoun County and interviewed by law enforcement where he admitted he intended to kill Glover. R. p. 27. Petitioner also confessed he cleaned up the blood at the scene of the crime. R. p. 25. Captain Regalis recounted how Petitioner told investigators that immediately after the attack, “He hid where he could see us, and he watched us and waited until we ended up leaving or something to that effect before he was able to leave and go down the road.” R. p. 28. Petitioner explained he understood he could not talk to the law enforcement officers because he would go to jail. R. p. 28. Captain Regalis noted that he had over twenty years of law enforcement experience, which included dealing with people with mental illnesses, and he did not see any behavior by Petitioner that would lead him to believe he did not understand right from wrong. R. p. 28. Captain Regalis stated that not only did he believe Petitioner understood right from wrong, Petitioner himself expressed to him that he knew right from wrong. R. pp. 28-29. Captain Regalis stated Petitioner told him “the voices told him to do it.” R. p. 30. Captain Regalis opined Petitioner was making up the allegation that he heard voices. R. p. 30.

On January 6, 2016, Petitioner underwent a mental competency evaluation at the Medical University of South Carolina pursuant to an Order by the Honorable L. Casey Manning. R. p. 136 (Competency Evaluation R. p. 1). The basis for the Order read, “Defendant has a history of mental illness, and has a history of reporting hearing voices.” R. p. 136 (Competency Evaluation p. 1). Petitioner stipulated to the report for use at trial. R. p. 4. The evaluation states:

Midway through the evaluation, nearly all of his responses centered around the voices he hears, his belief that something has been planted in him (“I think it’s government equipment that the government shouldn’t be having”) and the conspiracy against him. He frequently stated that others did not believe him, though he himself did not believe himself to be crazy.

R. p. 139 (Competency Evaluation p. 5). The forensic psychiatrists at MUSC conducted a Miller-Forensic Assessment of Symptoms Test (M-Fast) on Petitioner. R. p. 140 (Competency Evaluation p. 6). The M-Fast is a screening measure designed to detect the feigning of psychiatric symptoms. R. p. 140 (Competency Evaluation p. 6). The evaluation noted:

Based on scores reported in the M-Fast manual, [Petitioner's] total score was elevated and suggests he may be feigning or exaggerating psychopathology. Mr. Winston endorsed severe and unusual psychotic symptoms, as well as symptom combinations that are unlikely and inconsistent with genuine mood and psychotic disorders. He reported an atypical presentation and unusual course of illness for most psychiatric disorders. His self-report was inconsistent with behaviors observed during the interview. Finally, he expressed an overly negative view of himself that is more commonly endorsed by depressed or Borderline Personality Disorder patients than by genuinely psychotic patients.

R. p. 140 (Competency Evaluation p. 6). The evaluation further found:

There are indications that [Petitioner's] self-reported symptoms are not genuine and may be fabricated or exaggerated. First, his scores on a measure assessing whether an individual is feigning symptoms of mental illness were elevated, indicating he may not have been forthright in his report of symptoms. Second, the course of illness is inconsistent with known patterns of mental illness, in that he reported symptom onset much later in life than is typical. Next, severe mental illness commonly consists of a significant decline in functioning (occupational, hygiene, etc.) that often requires inpatient hospitalizations and stabilization on medication. At this time, it would appear that [Petitioner] has not been hospitalized psychiatrically and has been capable of living in the community and holding a job for many years without the assistance of psychiatric medication. . . . Nonetheless, it is our opinion that the symptoms he currently reports are not consistent with bona fide psychosis and, thus, a psychotic-spectrum disorder is not warranted.

R. p. 142-43 (Competency Evaluation pp. 7-8). The evaluators ultimately concluded that with respect to Petitioner's competency to stand trial:

It is our opinion, to a reasonable degree of psychological certainty, that [Petitioner] has the requisite rational and factual understanding of the proceedings against him and the ability to consult with his lawyer with a reasonable degree of rational understanding. Therefore, on the date of the evaluation, he is opined competent to stand trial.

R. p. 145 (Competency Evaluation p. 10). Prior to trial, Petitioner stipulated that he was competent to stand trial. R. p. 4. The parties also agreed to stipulate to the facts contained in the indictment. R. p. 9.

Dr. Amanda Salas testified for the defense at trial. R. pp. 37-100. Dr. Salas evaluated Petitioner at the request of Defense Counsel. R. p. 37. Dr. Salas gathered background and collateral information and conducted three interviews with Petitioner. R. p. 38. After interviewing Petitioner, Dr. Salas concluded he suffers from an illness on the psychiatric spectrum called delusional disorder. R. p. 38. Dr. Salas testified delusional disorder is very rare, affecting only .2 percent of the population. R. p. 39. Dr. Salas stated Petitioner believes people in the community were inserting objects in his body that are receivers that allow his body to be controlled externally. R. p. 40. Dr. Salas testified Petitioner believes Glover is part of a terrorist organization that controls the devices embedded in his body. R. p. 43. Dr. Salas stated Petitioner knew his behavior was not legally allowable, however “through his delusional system and as a derivative of the delusional disorder, at the time when this act occurred in the commission of this crime, he was functioning under hallucinations of instruction to harm [Glover]” R. p. 45. Dr. Salas clarified her belief Petitioner can tell the difference between right and wrong, however his delusions change his perceptions of moral right and wrong. R. pp. 61-62. Dr. Salas believes Petitioner’s alleged disorder also impaired his abilities to conform his behaviors within the boundaries of the law. R. p. 64. Dr. Salas admitted Petitioner’s act of cleaning up the crime scene and subsequently fleeing law enforcement could indicate an understanding of a legal wrong. R. pp. 73-74.

Dr. Salas conceded that she met with Petitioner only twice before producing her written report, which was not placed in evidence at trial. R. p. 65. Dr. Salas admitted everything in her

report is based on Petitioner's self-reporting of delusions. R. p. 68. Dr. Salas based her diagnosis exclusively on her conversations with Petitioner, conversations with Petitioner's mother, and reading Petitioner's diaries. R. p. 84. Dr. Salas did not conduct any testing, nor did she administer an M-FAST test. R. pp. 78-79. Dr. Salas acknowledged the MUSC report that was stipulated to by Petitioner dismissed the possibility of delusional disorder, however Dr. Salas believed they missed the diagnosis. R. p. 51. Dr. Salas stated Petitioner was unable to explain to her why he would summon the person who was allegedly terrorizing him to his house to talk to her. R. p. 86. Dr. Salas asserted Petitioner was honest with her, but not with the MUSC evaluators because he was told at the beginning of the interview they were hired by the State and would make him aware "they're not on my side." R. p. 92. Upon cross-examination by the State, Dr. Salas conceded that in a Department of Mental Health ordered evaluation, one of the first things the examinee is told by the doctor is they are a neutral party and are not on the "side" of any particular party. R. p. 94. In her evaluation, Dr. Salas concluded Petitioner was not competent to stand trial. R. p. 77. Dr. Salas noted that she was aware that Petitioner previously stipulated he was competent to stand trial. R. pp. 77-78.

The trial judge found:

The defendant's stipulation as to the competency of the [Petitioner] to stand trial discredits his own expert witness. His own expert witness indicated that she felt he was not competent to stand trial; but clearly, he is competent to stand trial. He was appropriate in his discussions with the court. He is obviously very intelligent and able to communicate effectively....The Court does find that he is competent to stand trial and his expert's witness is discredited.

R. pp. 119-120. With respect to Petitioner's request for a verdict of guilty but mentally ill, the trial judge ruled:

There are no fact witnesses regarding past or current condition to show sufficient evidence that the time of the attack he lacked sufficient capacity to confirm his conducts to the requirements of the law....He clearly is intelligent, articulate, and

I think, quite frankly, he knew that 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 [Petitioner] guilty of attempted murder.

R. p. 123. The trial judge concluded Petitioner was guilty rather than guilty but mentally ill or not guilty by reason of insanity, both of which were vigorously argued by Defense Counsel during trial and considered by the trial judge. R. p. 123.

ARGUMENT

The Court of Appeals correctly found that at the conclusion of Petitioner's bench trial, the trial judge properly found Petitioner guilty where he failed to present sufficient credible evidence to prove by a preponderance of the evidence that he was guilty but mentally ill.

Petitioner contends the trial judge abused his discretion by not finding him guilty but mentally ill. Specifically, Petitioner asserts Dr. Salas's testimony established by a preponderance of the evidence that he was mentally ill and the State presented no evidence with respect to his capacity to conform his conduct to the requirements of law. Petitioner concludes, "The State's evidence only went to contradict a finding of not guilty by reason of insanity and a finding of competency to stand trial. The State's evidence did not make a finding in regard to whether Petitioner was guilty but mentally ill. Pet. for Writ of Certiorari p. 9. On the contrary, Petitioner failed to prove by a preponderance of the evidence that he was guilty but mentally ill. The trial judge did not err in finding the testimony presented by Petitioner not credible and consequently Petitioner failed to present sufficient credible evidence that at the time of the act, he lacked sufficient capacity to conform his conduct to the requirements of law.

Standard of Review

"In a law case tried by the judge without a jury the standard of appellate review is limited to a correction of errors of law and a determination if there is any evidence to support the factual findings of the trial judge." Osterneck v. Osterneck, 374 S.C. 573, 649 S.E. 2d 127 (Ct. App. 2007) (citing Cook v. Eller, 298 S.C. 395, 397, 380 S.E.2d 853, 854 (Ct. App. 1989)). In a bench trial, the trial judge's findings are equivalent to a jury's findings in an action at law. Ross v. Ligand Pharm., Inc., 371 S.C. 464, 468, 639 S.E.2d 460, 463 (Ct. App. 2006).

Discussion

S.C. Code Ann. § 17-24-20 provides:

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.

(B) To return a verdict of "guilty but mentally ill" the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).

S.C. Code Ann. § 17-24-20. S.C. Code Ann. § 17-24-10 provides:

(A) 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).

Petitioner's assertion that there was no evidence contradicting Dr. Salas's testimony that Petitioner lacked the capacity to conform is simply not correct. Aside from Dr. Salas's testimony, all of the evidence presented supported the conclusion that Petitioner's alleged mental illness was fabricated in order to escape liability for his crime. While Petitioner contends the MUSC evaluation made no findings regarding his capacity to conform, the MUSC report did not make such findings because the examiners conducted an M-FAST test and found indications Petitioner was feigning symptoms and "the symptoms he currently reports are not consistent with bona fide psychosis and, thus, a psychotic-spectrum disorder is not warranted." A person feigning symptoms who does not have a bona fide psychosis necessarily has the capacity to conform his actions to law. No specific finding in this regard would be expected.

Further, the testimony of fact witnesses who observed Petitioner's actions, conduct, and appearance indicated that, at the time of the crime, Petitioner knew right from wrong and

displayed no signs of being mentally unwell. Petitioner's conduct in the aftermath of his assault of Glover was consistent with someone that understood his actions. Petitioner tried to wash the blood away from the area where he originally stabbed Glover in order to conceal evidence of the crime. Upon the arrival of law enforcement, Petitioner surreptitiously positioned himself nearby in order to observe law enforcement and facilitate his escape. Petitioner also told law enforcement that he did not approach them because he knew he would go to jail. Glover, who knew Petitioner most of her life, testified she believed Petitioner knew right from wrong on the day of the crime and that throughout the years she knew Petitioner, he never behaved in a way that caused her to believe he did not know right from wrong. Similarly, Captain Regalis, a twenty year veteran of law enforcement, testified he did not observe any behavior in Petitioner that would indicate he did not know right from wrong. Petitioner even expressly told Captain Regalis he knew right from wrong. While Petitioner also told Captain Regalis "the voices told him to do it," Captain Regalis did not believe Petitioner's assertion was credible.

Moreover, Petitioner's asseverations concerning mental illness are fraught with inconsistency. Petitioner told Captain Regalis that "the voices told him to do it." Yet, during his examination by Dr. Salas, Petitioner said people in the community were inserting objects in his body that are receivers that allow his body to be controlled externally. Petitioner elaborated Glover was part of the organization that controlled the devices in his body which led to the voices he heard in his head. These two assertions are irreconcilable, as Glover would then be simultaneously controlling the voices in Petitioner's head and telling Petitioner to kill her. This inconsistency further reflects the factual finding of the Court, the MUSC evaluators, and numerous fact witnesses that Petitioner was fabricating a mental illness in order to escape liability for a crime he admitted to committing.

Finally, evidence supports the trial judge's conclusion that Dr. Salas's testimony was not credible. Dr. Salas's based her opinions exclusively on self-serving statements that Petitioner and his mother made about his "condition" and said she believed Petitioner because the symptoms described to her were consistent with delusional disorder. Dr. Salas did not conduct an M-Fast test, nor did she conduct any other testing. In explaining why she reached a different conclusion than the MUSC evaluators, Dr. Salas hypothesized Petitioner was honest with her, but not with the MUSC evaluators because he would be told at the beginning of the interview they were hired by the State and would make him aware "they're not on my side." However, Dr. Salas later had to concede that in a Department of Mental Health ordered evaluation, one of the first things the examinee is told by the doctor is that they are a neutral party and are not on the "side" of any particular party. The trial judge correctly noted Petitioner discredited Dr. Salas, his own expert witness, when he stipulated to his competency while Dr. Salas opined Petitioner was not competent to stand trial. In finding Petitioner discredited his own expert witness and finding Petitioner failed to present sufficient evidence to prove himself guilty but mentally ill, the trial judge effectively made a credibility finding that Dr. Salas was not credible, while the MUSC report and the State's fact witnesses were credible. This Court should defer to the trial judge's determination concerning the credibility of the witnesses. See Gowdy v. Gibson, 381 S.C. 225, 233, 672 S.E.2d 794, 798 (2008) (stating the appellate court generally defers to trial judge's findings regarding witness credibility); State v. Tutton, 354 S.C. 319, 325-26, 580 S.E.2d 186, 190 (Ct. App. 2003) ("The determination of a witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate his or her veracity."). Due to the lack of credible evidence establishing Petitioner was guilty but mentally ill, the trial judge properly found Petitioner guilty. This Court should deny certiorari.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 20, 2018

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Appellate Case No. 2018-000458

THE STATE,

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CHARLES WINSTON, JR.,

PETITIONER.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the Return to Petition for Writ of Certiorari on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Katherine H. Hudgins, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.
This 20th day of August, 2018.


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