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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID ANTONIO LITTLE, JR.

APPELLANT

APPELLATE CASE NO. 2021-000990

INITIAL BRIEF OF APPELLANT

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[1] State v. Blair 275 5.6.529 273 S.E.2d 536 (1981).

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The trial judge erred in finding appellant competent to stand trial following a pretrial Blair[2] hearing where prior to the hearing and throughout the trial there were at least 85 instances of appellant's disruptive outbursts toward the trial judge and witnesses (some of which were non-sensical and others which included profanity), and where appellant was removed from the courtroom three times due to his constant interruptions (including singing) during the trial, and where trial counsel objected to the state's competency finding because clearly appellant was not competent to stand.

[2] State v. Blair 275 5.6.529 273 S.E.2d 536 (1981).

STATEMENT OF THE CASE

Appellant David Antonio Little, Jr. was convicted of three counts of assault on a police officer while resisting arrest per jury trial held during the July 2021 term of the Chesterfield County General Sessions Court before Judge Roger M. Young. Appellant was sentenced to three ten-year (concurrent) prison terms. Assistant Solicitor Kernard Redmond prosecuted the case and Attorney Tonya Copeland-Little represented appellant at trial.

Appellant appealed his convictions and sentences. This brief follows.

STANDARD OF REVIEW

The trial judge's determination of competency must have evidentiary support and not be against the preponderance of the evidence. State v. Nance, 320 S.C. 501, 466 S.E.2d 349 (1966).

ARGUMENT

The trial judge erred in finding appellant competent to stand trial following a pretrial Blair[3] hearing where prior to the hearing and throughout the trial there were at least 85 instances of appellant's disruptive outbursts toward the trial judge and witnesses (some of which were non-sensical and others which included profanity), and where appellant was removed from the courtroom three times due to his constant interruptions (including singing) during the trial, and where trial counsel objected to the state's competency finding because clearly appellant was not competent to stand.

On March 9, 2021, Officers Marc Weiss, Spence Vaughn, and Clay Sikes were all involved in an attempt to place appellant back in his cell at the jail where he was being held after a verbal altercation with two employees at the jail. During the attempt to detain appellant, each of the three officers were struck about their eyes by appellant. All three officers testified at trial. Tr. 122, l, 11 – p. 142, l. 14; Tr. 144, l. 21 – p. 153, l.5; Tr. 155, l. 12- p. 164, l.8.

A Blair hearing was held prior to trial. Dr. Matthew Gaskins of SCDMH testified that he examined appellant and found that he was competent to stand trial because he appropriately answered questions about the case, despite the fact that he was hostile and obstinate and not fully cooperative during the interview. Tr. 42, l.4-p. 47, l.10; Tr. 52, l.10-p.57, l.16. On cross-examination of Dr. Gaskins by appellant's trial counsel, it was revealed that during the interview, appellant told Dr. Gaskins that he believed it was the year 2000, and that the U.S. was part of Al Morocco, and that the U.S. government is a corporation, and that he (appellant) was God or sent by God or Allah the true God, and that he rambled on about the Moor Sovereign Citizenry. Dr. Gaskins hinted at appellant's possible anti-social personality disorder. Tr. 57, l.21-p. 64, l.13.

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[3] State v. Blair 275 5.6.529 273 S.E.2d 536 (1981).

Appellant testified during the Blair hearing and gave the following answers:

> Defense Counsel: What is my role here today?
>
> Appellant: Your role is to lie for me You are supposed to lie. Tr. 76, lines 13-15
>
> Defense Counsel: You believe that all lawyers are liars?
>
> Appellant: Yes. Good paid liars. Tr. 76, l.20-21.
>
> Defense Counsel: Do you understand that when you're in a courtroom you have to sit quietly and you can't make outbursts if you want to stay in the courtroom?
>
> Appellant: No I don't understand that. I stand over J. Tr. 77, lines Tr. 77, lines 4-7.

At the close of Dr. Gaskin's testimony, trial counsel objected to the finding of appellant's competency and informed the judge of appellant's uncooperative behavior. Tr. 67, l.16-23. Counsel's objection at the Blair hearing follows:

> The Court: All right. [appellant's defense counsel] so did you have a chance to talk to your client?
>
> Defense Counsel: Yes sir, I did.
>
> The Court: And what do you have to report?
>
> Defense Counsel: Your honor, at this time I don't think he's gonna be cooperative if he comes back in or, and he's not receptive to answering any questions about his competency.
>
> The Court: Okay. So—now, what is your position on his competency---
>
> Defense Counsel: I do not—
>
> The Court: --and his ability to assist you?
>
> Defense Counsel – I do not personally think that he has the ability to assist me in his defense.

> The Court: For psychological reasons or behavioral reasons?
>
> Defense Counsel: Well, I'm not, I'm not a psychiatrist or a psychologist. I don't know what's wrong with him, Your Honor. I guess he just has anti-social personality disorder, but I just haven't been successful in getting him to communicate with me in a meaningful way. But I understand, you know, that the doctor think that's because he chooses not to do so.
>
> The Court: I guess that is the question, do you feel like he is choosing to act out in the manner that he does or is he incapable of conforming his behavior to what it is expected of him to sit during the trial?
>
> Defense Counsel: I don't think he capable of sitting here quietly for the trial and I know---
>
> The Court: And why is that?
>
> Defense Counsel: Well, I know you couldn't hear him, your Honor, but he was talking and mumbling and singing the whole time we were picking the jury a while ago. And I find it very difficult to listen to the witness whose on the stand or listening to what's going on around me while he is talking, muttering, singing and making noises. So, basically, that's my personal opinion is that he is not able to control his behavior. Tr. 67, l.17-p.69, l.14.

Nevertheless, the trial judge ruled that appellant was "competent to stand trial and [could] assist his lawyer if he chose to and he [was] capable of sitting there and conforming his behavior to the expectations of the court." Tr. 77, lines 20-23. The trial judge went on to advise appellant that his outbursts would not be tolerated and that he would be removed if the outbursts continued. Tr. 77, l.24-p.78, l.3.

Note that appellant was removed from the courtroom by the trial judge during the Blair hearing because of his unruly behavior that included singing and talking rambling about "making up bullshit." Tr. 60, l.12-22, Tr. 68, l.21-23.

The trial judge had to remove appellant from the trial again (a second time) at the end of the first day of trial testimony before the video tape of the incident was played because he was rambling at the defense table. The trial judges remarks regarding this removal follow:

> The Court: All right. Well, Mr. Little, you still don't seem to be capable of sitting there and keeping your mouth shut. You don't get to run commentary throughout the trial and you are disrupting the trial so I'm going to order that you be removed for the remainder of today. (Whereupon, the defendant is rambling at defense table)
>
> The Court: I'm listening. I can hear you all way over here.
>
> Mr. Little: She's not objecting. What am I supposed to do? Not say nothing because she's not doing her job. I want to stop for ineffective assistance of counsel because she's not been doing her job.
>
> The Court: Remove him from the courtroom. (Whereupon, the defendant is rambling as he's leaving the courtroom)
>
> Mr. Little: She ain't been doing her job. She been lying the whole time. This whole trial has been fucking fucking three days. I ain't know about the trial, three days. What the fuck. She's been lying the whole time. I don't do no lying. I'm gonna tell the truth, the whole truth and nothing but the truth so the truth is going to set me free. Is the truth going to set you free? I doubt it. Cameras don't lie. March 8th, that's when it happened. It was two guys. Not three. Not four.
>
> The Court: We don't have listen to this. Take him.
>
> Mr. Little: Yeah, yeah, take him. Take him. Take him. You're a banker representative. You probably work for Wells Fargo or Citibank. Probably Citibank. You fucking cruddy cracker. (Whereupon, the defendant is removed from the Courtroom) Tr. 100, l.4-P. 101, l.9.

Then, the trial judge placed his findings for the removals on the record as follows:

> The Court: I'd just like to record to reflect that the defendant continues to chatter away both throughout the trial, to his lawyer, and outburst during the lawyer for the State asking questions. He

> just doesn't seem to be able to conform his behavior to his expectations that I set for him. So I'll give him another opportunity to come back tomorrow morning but right now we're just going to move on without him today. He does all right for a little bit and then he chooses not to. Tr. 102, l.2-10.

Prior to sentencing, as appellant rambled out loud verbally upon after being put out of the courtroom again (for a third time) due to another outburst, the trial judge summarized and commented on appellant's behavior at trial and how it impacted the case. Tr. 201, l.21-23, l.8. The trial judge's comments follow:

> Throughout the trial, obviously, there's been a question about whether or not he can control his conduct and whether or not he was competent to stand trial. We listen to Dr. Gaskin and gave his opinion that while he does suffer from a personality disorder mental illness classified as anti-social behavior, he, basically, has a very difficult personality but in Dr. Gaskins opinion he knows exactly what he's doing and that these rantings about sovereign citizens are things that is capable of controlling. I note throughout the trial I gave him a number of warnings. I gave him quite a bit of lead way only when he just insisted on continuing ignoring my admonitions for him to keep quiet that I have him removed. Every time I had him removed he was able to then come back and sit there and be quiet many times for many minutes on into an hour at a time he was able to sit there, be quiet. Beginning with the jury selection on Monday he was, that's when I first began to believe that the doctor was one hundred percent correct in his assessment that he he chose – he is capable of conforming his conduct and that he was competent to stand trial and assistance of counsel – he just chose not to assist his counsel and despite her best efforts would often try to disrupt her. But it wasn't that it was uncontrollable on his part, it was, in fact, intentional on his part. His lawyer did a remarkable job in trying to represent him. And he simply showed that by his own conduct. He could shut up, he just chose not to. And there were opportunities like this morning he had promised that he would shut up and behave during the trial and he did for some point. But at some point during the testimony I noticed that whenever the testimony became adverse to him he would start getting agitated and he would start wanting to act up and he often did that. I know there, at one point, there was an officer who was standing by and he seemed to want to direct his attention towards her. But once I ordered him not and she sat down, well, he sat down and quietly watched the trial. But there were times when he

> just wanted to put on a show for us. Every time I noted that, one time he wanted to play with cups and that was fine. If he wanted to sit there and show the jury what he thought he was contemptuous of their presence that's his choice, I suppose. But there was every opportunity he had to conform his conduct to what was expected and he often did, but then decided he would need to show us he was contemptuous of this court's proceedings and that he as he stated in the video and by his conduct stated "he didn't think he was subject to the law of the United States but rather of his own law". Tr. 203, l.13-p.205, l.10.

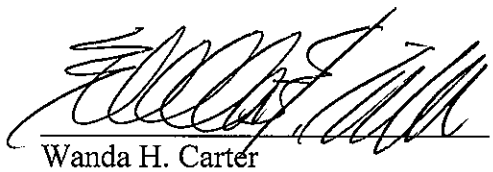
The test for determining competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceeding against him. State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2003), citing to Dusky v. United States, 362 U.S. 402 (1960). The defendant bears the burden of proving his lack of competency by a preponderance of the evidence. State v. Reed 332 S.C.35, 503 S.E.2d 747 (1998). Moreover, a judge may assess the competency issue based on a view of the defendant's demeanor at trial. State v. Weik, supra. In the case at bar, where the trial judge had to remove appellant from the courtroom three times during the trial proceeding due to his (appellant's) outrageous outbursts and interruptions of the proceeding, and where appellant on 85 occasions either sang songs, mumbled, and outright verbally confronted the judge and witnesses with extreme disrespect and foul language to interrupt the trial, it was clear that appellant could not control his behavior and was not competent to stand trial. Appellant could not remain quiet during the trial. Note that appellant suffered from anti-social personality disorder, and that counsel objected to the competency ruling after explaining that appellant state of being was such that she could not consult with him regarding the legality of the case and that he was not able to understand the trial or trial proceeding.

For example, Appellant stated that he believed the trial judge wanted to "hang him," and that his defense attorney was a paid liar who worked for the government and (not for him). Tr. 75, l.8-p. 77, l.3. This deranged stream of consciousness continued throughout the trial. Appellant stated his attorney was "lying the whole time" at trial, and accused the trial judge of being a "banker representative." Tr. 100, l.12-p. 101, l.8. Appellant added he was not under his (trial judge's jurisdiction) and would not be put under "his d---," and that he would drop his "b--- on this world," and that "he (appellant) was the only king," and that the "IRS [wa]s your (judge) friend," and that the "Moors [were] the original people." Tr. 167, l. 17 – p.172, l. 25.

It was obvious based on appellant's behavior at trial that clearly he was not competent to stand trial. The trial judge erred in ruling that appellant was competent to stand trial in the case.

CONCLUSION

Based on the argument above, appellant's convictions and sentences should be vacated and his case remanded to the lower court for a new competency hearing and a new legal proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This7th day of March, 2022.

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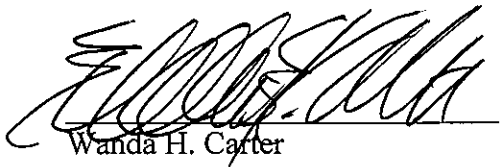
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case have been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on David A. Little, #385407, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 7th day of March, 2022.



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