

NO. 70124-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JAMES LESTER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE THERESA DOYLE

BRIEF OF RESPONDENT

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KING COUNTY
COURT

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A. ISSUE PRESENTED

Due process requires that a defendant be competent to stand trial. A defendant is competent if he understands the nature of the charges against him and is able to assist his lawyer in his own defense. The defendant bears the burden of demonstrating incompetency by a preponderance of the evidence. Here, the State's expert opined that Lester was competent to stand trial. Two corrections officers who had interacted with Lester at the jail, along with jail records regarding Lester's mental status, buttressed that opinion. Did the trial court act within its broad discretion when it found that Lester had failed to meet his burden of proving his incompetency?

B. STATEMENT OF THE CASE

1. SUBSTANTIVE FACTS

In 2011, the defendant, James Otis Lester, was living at 1811 Eastlake, a facility operated by the Downtown Emergency Service Center that provided housing and case management services to chronic alcoholics. 4RP 14-17, 19, 26, 45-46.¹ He was about six feet tall, a large man with no apparent physical limitations. 4RP 46-47. The victim, Luis Castillo, also lived at 1811 Eastlake. 4RP 39. He was an older man, small

¹ This brief follows Lester's convention for referring to the Verbatim Report of Proceedings. See Brief of Appellant at 1, n.1. The additional transcript filed by the State is referred to by its date: 11/30/11RP.

and frail, who walked with a stoop and a shuffle. 4RP 39, 70-71. Prior to February 4, 2011, Castillo was fairly independent; he was able to walk, carry his own plate at dinner, feed himself, communicate with others, and meet with his payee at a different facility to collect an allowance twice a week. 4RP 40-42, 73, 115-18; 6RP 56-63.

On February 4, David Anderson was working at the front desk at 1811 Eastlake when he received a call on the intercom from another resident saying that there was a man down. 4RP 14-16, 19-21. He went to investigate, and located Castillo lying on the floor in a fetal position with blood around his head and several teeth on the ground. 4RP 21-22. He called for assistance; once medics arrived, he checked the facility's security camera to see what had happened. 4RP 23-26. What he saw was chilling: Castillo and Lester exited the men's room together, had an altercation, then Lester threw Castillo to the ground and repeatedly stomped on his head until the smaller man was unconscious. 4RP 26-31; Ex. 1.

A responding officer located Lester in his cubicle, apparently asleep, only feet from where Castillo was being treated for his injuries. 4RP 49-50, 92-93. He was still wearing the clothes he had on when he assaulted Castillo, including sturdy work boots with heavy soles and protective hard toes. 4RP 96-99. He was arrested. 4RP 92.

Castillo was transported to Harborview Medical Center for further treatment. 6RP 8-10. He had sustained a serious head injury, including a skull fracture, bruising and bleeding to the brain, and a spinal fracture. 5RP 20-34; 6RP 14-30. When his case managers and the case detective visited him in the hospital shortly after the assault, Castillo was unable to talk and was largely unresponsive. 4RP 75, 150-53. After he was discharged from the hospital, he was transferred to a nursing home. There, he was unable to walk, dress himself, eat on his own, toilet or bathe himself, or fully communicate. 4RP 118-23; 5RP 35, 42-63, 108-23, 171-74; 6RP 34, 64-73. Because of his decreased mobility as a result of the severe brain injury suffered in the attack, Castillo was at an increased risk of developing pneumonia. 5RP 63, 87-89, 123-24. In December 2011, he indeed contracted pneumonia, which led to his death on December 24, 2011. 5RP 178; 6RP 75-77, 88-102, 131-58; 7RP 42-47. The King County Medical Examiner classified Castillo's death as a homicide. 6RP 156.

2. PROCEDURAL FACTS

On February 9, 2011, the State of Washington charged Lester with one count of Assault in the First Degree. CP 1. On November 23, 2011, the Information was amended to add a count of Assault in the Second Degree, with a special allegation that the injuries of the victim

substantially exceeded the level of bodily harm necessary to satisfy the elements of that crime. CP 17-18. Although the matter had already been assigned to a courtroom to begin trial, it was continued to allow counsel additional time to prepare a defense to the aggravating factor alleged in the Amended Information. CP 32. In his pretrial briefing filed on November 21, 2011, Lester did not raise the issue of his competency to stand trial. CP 7-16.

After Castillo died on December 24, 2011, and an autopsy determined that the cause of death was homicide, the State scheduled a motion to amend the Information to add a count of Murder in the Second Degree. On January 23, 2012, Lester filed an objection to any continuance in the case; competency was not mentioned in the supporting brief. CP 20-25. At the motion hearing the next day—nearly a year after Lester was initially charged in this case—defense counsel for the first time asked the court to stay the proceedings and order an evaluation of Lester’s competency to stand trial.² CP 32-33, 148. The trial court granted the motion. CP 26-30. Lester was evaluated by a Western State Hospital

² Lester apparently noted a motion for a competency evaluation for November 30, 2011. That motion was withdrawn without Lester filing any supporting materials or making an oral record that could lead a court to make a finding that there was a reason to doubt his competency, the standard for ordering a competency evaluation. CP 377; 11/30/11RP 2-3; *Pate v. Robinson*, 383 U.S. 375, 387, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966); RCW 10.77.060(1)(a). Presumably, counsel did not have a reason to doubt Lester’s competency as of November 30, 2011. Also on November 30, 2011, the court heard and denied Lester’s pro se motion for new counsel. CP 377; 11/30/11RP 2-6.

forensic psychologist, Dr. Joanna Johnson, and by a defense-retained neuropsychologist, Dr. John Neer. 1RP 6-10, 108-14. A contested competency hearing was held before the Honorable Theresa Doyle. 1RP. After hearing the testimony of these two doctors and three additional witnesses, and reviewing the declaration of defense counsel as well as the written competency evaluations, the court found Lester competent to stand trial. CP 74-75.

The matter then proceeded to trial before the Honorable Mary Yu on charges of Murder in the Second Degree and Assault in the First Degree. 3RP; CP 79-80. The jury found Lester not guilty of the crime of Murder in the Second Degree, but guilty of the lesser-included offense of Assault in the Second Degree, as well as the crime of Assault in the First Degree. CP 285-87. The court vacated the Assault in the Second Degree conviction pursuant to double jeopardy principles. CP 365-66. It sentenced Lester to a standard range sentence of 93 months in prison, rejecting his request for an exceptional sentence downward based, in part, on a claim of mental incapacity. CP 327-32, 357-64. This appeal timely followed. CP 368.

C. ARGUMENT

Lester contends that the trial court erred by finding him competent to stand trial. But there was ample evidence in the record that Lester

understood the nature of the proceedings against him and was able to assist his attorney in his own defense. The trial court did not abuse its discretion in concluding that Lester failed to meet his burden of proving his incompetency.

Due process requires that a defendant be competent at the time of trial. Drope v. Missouri, 420 U.S. 162, 172, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975); Pate v. Robinson, 383 U.S. 375, 378, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966); see also RCW 10.77.050. A defendant is presumed competent. Grannum v. Berard, 70 Wn.2d 304, 307, 422 P.2d 812 (1967). Unless he has been previously adjudicated incompetent, the burden of proof lies squarely on the defendant to demonstrate his incompetency by a preponderance of the evidence. See, e.g., State v. Harris, 114 Wn.2d 419, 431, 789 P.2d 60 (1990); State v. P.E.T., 174 Wn. App. 590, 598-99, 300 P.3d 456 (2013); RCW 10.77.084(1)(a); 12 ROYCE A. FERGUSON, JR., WASHINGTON PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 907, at 178 (3d ed. 2004).

A defendant is competent if he has the ability to rationally and factually understand the nature of the proceedings against him, and if he can assist in his own defense by consulting with his lawyer with a reasonable degree of rational understanding. Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960); State v. Lord, 117 Wn.2d

829, 900, 822 P.2d 177 (1991); RCW 10.77.101(15). Generally, where a court finds that a defendant understands that there is a judge in the courtroom, comprehends that a prosecutor will try to convict him of a criminal charge, knows that he has a lawyer who will try to help him, has the ability to recall past facts and relate those facts to his attorney, and understands the concept of guilt, the defendant is competent. See State v. Ortiz, 104 Wn.2d 479, 482-83, 706 P.2d 1079 (1985); State v. Minnix, 63 Wn. App. 494, 499, 820 P.2d 956 (1991).

To be competent, a defendant does not need to be able to suggest trial strategy to his counsel, or even to choose among trial strategies and defenses. See, e.g., Harris, 114 Wn.2d at 428; State v. Hahn, 106 Wn.2d 885, 894, 726 P.2d 25 (1986); Ortiz, 104 Wn.2d at 483. Furthermore, a defendant does not need to be able to recall the events in question. Harris, 114 Wn.2d at 428. Indeed, even individuals with amnesia with respect to the crime have been found competent. E.g., State v. Swanson, 28 Wn. App. 759, 626 P.2d 527 (1981). Additionally, the requirement that a defendant be able to assist his counsel in his own defense requires minimal participation by a defendant. Harris, 114 Wn.2d at 429. As the Harris court recognized, the need for defendant participation is reduced in an era where a defendant is constitutionally entitled to competent representation. Id.

The trial court has broad discretion in determining a criminal defendant's competency to stand trial. Ortiz, 104 Wn.2d at 482. Thus, the court's judgment as to competency will not be reversed absent a manifest abuse of discretion. Id.; Minnix, 63 Wn. App. at 498; State v. Hicks, 41 Wn. App. 303, 306, 704 P.2d 1206 (1985).

Here, there was ample evidence to permit the trial court to find Lester competent. First, the State's expert, Joanna Johnson, opined that Lester was competent. 1RP 148; CP 235-36; Ex. 4.³ Dr. Johnson, a forensic psychologist at Western State Hospital, has performed hundreds of competency evaluations in the course of her employment. 1RP 108-10. Before meeting with Lester, Dr. Johnson reviewed his medical records from the King County Jail, his records from Harborview Medical Center, the discovery in the case, his legal history, and database searches regarding his mental health treatment in Washington state. 1RP 115; CP 231-33. Lester had never had any mental health treatment. 1RP 118; CP 232-33. Dr. Johnson also spoke with Lester's attorney to get a sense of what issues were of concern to him. 1RP 116; CP 230.

Dr. Johnson then met with Lester for nearly two hours on February 14, 2012, in order to evaluate him. 1RP 113-15. Lester understood the

³ Exhibit 4, admitted at the competency hearing, is Dr. Johnson's written evaluation. It also appears at least twice in the Clerk's Papers. For simplicity, this brief will cite to the particular page of the Clerk's Papers.

ground rules for the meeting—what the purpose of the evaluation was, that Johnson and Lester would not have a confidential discussion, and that he could refuse to answer questions. 1RP 117; CP 230. During their conversation, Lester demonstrated no significant impairment of long-term memory, and only mild impairment of recent memory. 1RP 121-22, 130; CP 233, 235. He was managing the ordinary tasks of adult daily living, albeit in an incarcerated setting; for instance, his hygiene and grooming were appropriate. 1RP 127; CP 233. Lester was mentally organized, was tracking the discussion, demonstrated good concentration, and provided relevant responses to Dr. Johnson's questions. 1RP 128-29; CP 233. He never lost track of what they were doing or why he was there, demonstrated an ability to think abstractly, recognized his attorney, and had intact judgment. 1RP 130-32, 144; CP 233, 235. Although she occasionally had to repeat questions for him, Dr. Johnson stated that that was because Lester was hard of hearing. 1RP 119; CP 233.

With respect to Lester's ability to understand the court processes and the nature of the charge, Dr. Johnson testified that he understood the roles of the judge, witnesses, and jury, the role of the prosecutor and his own attorney, and the general nature of the charge, the fact that the charge was being amended because the victim had died, as well as the difference in consequences between Assault in the First Degree and Murder in the

Second Degree. 1RP 139-44; CP 234-35. With respect to his ability to assist counsel, Dr. Johnson explained that, based on her evaluation, Lester was able to sit with his lawyer, relate facts, and have a goal-directed and organized conversation. 1RP 145; CP 235-36. He demonstrated intact reasoning skills, and his discussions were rational. 1RP 144-45; CP 233-36. In short, Dr. Johnson had no concerns about Lester's ability to assist his attorney. 1RP 145; CP 235-36.

Second, records available to Dr. Johnson strongly corroborated her opinion that Lester was competent.⁴ Specifically, Dr. Johnson reviewed progress reports generated by the King County Jail during Lester's 17-month incarceration prior to the competency hearing. 1RP 115, 134-35, 145; CP 231-32. Those reports reflected that Lester's thinking was consistently organized and linear, as well as reality-based. 1RP 134-35. There was nothing in the jail's records that reflected any cognitive impairment. 1RP 135-36. On a single occasion, the reports noted a deterioration in memory and concentration, but it was specific to a particular medical issue Lester experienced in 2011. 1RP 136; CP 232.

Third, the State called two King County corrections officers to talk about their interactions with Lester at the jail. 1RP 82-107. Kenneth Morano, an officer assigned to classification of inmates, testified that

⁴ The defense neuropsychologist, Dr. Neer, did not review these records. 1RP 15, 44.

Lester had never been disoriented and had no difficulty following directions. 1RP 82-86, 88-89, 94. Lester was capable of communicating with Morano in writing (via “kites”). 1RP 84, 96. Similarly, Vincent Johnson, another corrections officer, explained that he had regular contact with Lester, and that Lester never exhibited any confusion or disorientation. 1RP 99-103. Lester could follow instructions, recognize the officer, and communicate to get his own needs met. 1RP 103-06.

Fourth, the trial court had the opportunity to observe Lester for itself. 1RP. Although Lester did not testify, he was present in court for lengthy proceedings three times from June 20, 2012, to July 11, 2012. 1RP 4, 68, 182. Moreover, the court also presided over Lester’s pro se motion to discharge counsel, heard on November 30, 2011. CP 377; 11/30/11RP 2-6. During those hearings, the court could observe Lester’s grooming and hygiene, his affect, his ability to interact with counsel and remain focused on the proceedings, and his demeanor and conduct in court. During Lester’s motion to discharge counsel, the court directly interacted with him and was able to observe his ability to communicate and to track the proceedings. 11/30/11RP 2-6. The trial court could properly consider any and all of these observations in making a determination regarding competency. State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302 (1967) (“The trial judge may make his determination from

many things, including the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.").

Despite this extensive evidence and the trial court's observations of him in court, Lester contends that the trial court should instead have accepted the opinion of his own neuropsychologist, Dr. Neer, who testified that Lester was unable to assist his attorney. Brief of Appellant at 11-12. But decisions about the credibility of witnesses and the weight to be given to the evidence lie entirely with the trial court. State v. Benn, 120 Wn.2d 631, 662, 845 P.2d 289 (1993). Here, Dr. Neer's opinion was countered by Dr. Johnson, two corrections officers, and the jail's records, and the trial court could reasonably have found that evidence more compelling. For instance, unlike Dr. Johnson, Dr. Neer had never reviewed the numerous progress notes from the jail that reflected no cognitive impairments, and which were created both before and after the two doctors conducted their evaluations. 1RP 15, 44. Those records also undercut Dr. Neer's testimony that Lester was unable to learn new information, by documenting that Lester told the jail staff about some elements of the testing that occurred during the evaluations. 1RP 137-38. Indeed, Dr. Neer acknowledged that Lester recognized him and knew why he was there each time that they met, and that he was aware that Castillo

had recently died—demonstrating that Lester was indeed capable of learning new information. 1RP 45, 59.

Lester also implies that the trial court should have deferred to his lawyer's opinion about his competency. Brief of Appellant at 10, 12. A defense attorney's opinion regarding his client's competency is a factor to which the trial court must give considerable weight. State v. Hicks, 41 Wn. App. 303, 307, 704 P.2d 1206 (1985). His opinion, however, cannot be determinative. State v. Swain, 93 Wn. App. 1, 10, 968 P.2d 412 (1998). Here, counsel filed a declaration outlining his concerns about Lester's ability to assist in his own defense. CP 172-74. However, the declaration was brief, and was untested by cross-examination. It did not contest Dr. Johnson's characterization of the interview she conducted with Lester, for which counsel was present. CP 164; 1RP 131, 141. Compare City of Seattle v. Gordon, 39 Wn. App. 437, 442, 693 P.2d 741 (1985) (cursory opinion of attorney concerning his client's competency, coupled with delay in raising the issue and court's colloquy with the defendant, was insufficient to warrant further inquiry).

Counsel's declaration also did not address why counsel did not raise competency earlier, although he claimed he had noticed a problem months prior. CP 172-74. Indeed, the court could reasonably have been suspicious about the timing of Lester's alleged incompetency. Although

counsel had represented Lester for nearly a year, and had even been assigned to a courtroom to begin trial, he had never sought a determination of Lester's competency until the day that the State moved to amend the charging instrument to add a count of Murder in the Second Degree. Compare Gordon, 39 Wn. App. at 442 (noting that where seven months elapsed between arrest and trial, and counsel had conferred with his client and appeared in court numerous times, a motion for a competency evaluation on the day of trial appeared to be more a trial tactic than an indication of real concern).

Finally, Lester did not testify at the competency proceeding, nor did counsel ask the court to engage him in a colloquy in order to observe his mental abilities. Had Lester been unable to consult with his attorney with a reasonable degree of rationality, such testimony or colloquy could have provided the court with compelling firsthand evidence of his asserted cognitive deficiencies. Lester chose not to present it.

In short, Lester had the burden of proof to demonstrate his incompetency. Competency is a low bar—a defendant need only be able to understand the nature of the charges and minimally assist his attorney in defending him. Although there was evidence in the record to suggest that Lester had difficulty with the second prong, there was also substantial evidence to show that he was able to consult with his lawyer with a

reasonable degree of rational understanding. The trial court did not abuse its discretion in concluding that Lester had failed to sustain his burden of proof.

D. CONCLUSION

For all of the foregoing reasons, Lester's conviction for Assault in the First Degree should be affirmed.

DATED this 20th day of November, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

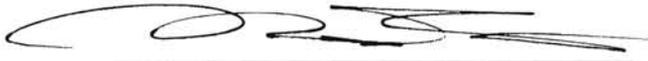
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Eric J. Nielsen, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. JAMES LESTER, Cause No. 70124-0-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 20 day of November, 2013

A handwritten signature in black ink, appearing to be "Eric J. Nielsen", written over a horizontal line.

Name
Done in Seattle, Washington