

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHNNY JAMES, JR.

APPELLANT

VS.

NO. 2010-KA-0786

STATE OF MISSISSIPPI

APPELLEE

SUPPLEMENTAL BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

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STATEMENT OF THE ISSUE

- I. James' initial attorney, P. Shawn Harris, intended to and did seek a psychiatric evaluation of James and the issue of competency has been addressed on the record as required pursuant to Rule 906 of the Uniform Circuit and County Court Rules and James was correctly determined to be competent to stand trial.**

STATEMENT OF THE CASE

On or about February 5, 2008, a Newton County Grand Jury indicted Johnny James, Jr., for the following:

Johnny James, Jr., . . . did willfully, unlawfully and feloniously have sexual intercourse with S. L., a child under the age of fourteen (14) years, when the said Johnny James, Jr. Was more than twenty-four (24) months older than the said S. L., and not the spouse of S. L., contrary to and in violation of Section 97-3-65(1)(b)(I), Miss. Code Ann. (1972). . . .

James was tried and convicted on August 19, 2008. He was sentenced to 25 years in the custody of the Mississippi Department of Corrections, to be served day for day. The court further ordered that James be evaluated for his needs for counseling and therapy for this sexual crime. (Tr. 172) James filed a Motion for JNOV or in the Alternative for a New Trial. After a hearing, the trial court denied James' Motion and the instant appeal ensued. (Tr. 191)

SUPPLEMENTAL HEARING

Shawn Harris testified that he served as the public defender for Johnny James Jr. Harris testified that he requested a mental evaluation to determine whether James was competent to stand trial. He testified that the defense believed that James needed a psychiatric evaluation. Harris testified that he filed a petition to have James evaluated but that in the body of the petition another defendant was named due to a typographical error. Harris testified that it was his intention to have James evaluated for his mental competence to stand trial. Harris testified that an examination was done by Dr. Mark Webb whose ultimate opinion was that James was competent to stand trial. After the examination and report by Dr. Webb, another public defender took the case to trial. Harris testified that Chris Collins tried the case instead of Harris. Harris testified that the single count indictment for statutory rape was the only thing for which James

was tried. Harris testified that he would have discussed the report with James, but that he would not have specifically made James aware of Rule 906 of the Uniform Circuit and County Court Rules, which provides that the defendant has a right to obtain independent psychiatric testimony on his own behalf.

Dr. Mark Webb testified as an expert in the field of clinical and forensic psychiatry. He examined the defendant, Johnny James, Jr. to determine whether he was competent to stand trial in August of 2008. Dr. Webb also examined James pertaining to issues of insanity that would have existed on or about May 25, 2007, when the statutory rape occurred. He obtained a history of Johnny James, Jr. regarding use of alcohol and difficulties as a child. During the interview, James was very verbal and talked about his situation and his upcoming trial. He appeared to be competent to understand the proceedings. Dr. Webb testified that James was most definitely competent to assist his counsel in the preparation and exercise of his defense. (Tr. Supp. 29) James told Webb that he was able to read and write. During the interview, James was very detail oriented and was able to share with Dr. Webb the details of the particular day. Dr. Webb testified that he produces a summary of his opinions regarding James' competency to stand trial. Dr. Webb testified that he determined that James was competent to stand trial. Dr. Webb testified that James was able to understand the difference between right and wrong at the time of the alleged incident on May 25th of 2007. James told Webb that he knew that having sex with an underage girl was wrong and he denied having done it. (Tr. Supp. 29) It was Dr. Webb's expert opinion that James was competent to stand trial and was not criminally insane. Dr. Webb testified that he published a report dated August 4th, 2008, and that they typically sent the report to the DA, the clerk and the opposing attorney. Dr. Webb testified that on the day of the

examination James was alert, logical and coherent, and showed a full range of affect. (Tr. Supp. 40)

SUMMARY OF THE ARGUMENT

Johnny James, Jr. was evaluated prior to trial at the request of his attorney to determine whether or not he was competent to stand trial. Any deficiency in the trial of Johnny James, Jr. for the statutory rape was remedied by the nunc pro tunc competency hearing held in the Newton County Circuit Court in accordance with the order of the Mississippi Court of Appeals. The trial court correctly held that James was competent to stand trial at the time of his trial. The trial The jury's verdict and the rulings of the trial court should be affirmed.

ARGUMENT

I. James' initial attorney, P. Shawn Harris, intended to and did seek a psychiatric evaluation of James and the issue of competency has been addressed on the record as required pursuant to Rule 906 of the Uniform Circuit and County Court Rules and James was correctly determined to be competent to stand trial.

In the instant case, James' initial attorney filed a motion in circuit court for a psychiatric evaluation of his client. The supporting affidavit contained a scrivener's error and another name was inadvertently pasted into the supporting affidavit. The circuit court granted the motion for a psychiatric evaluation to be conducted by Mark C. Webb, a qualified psychiatrist of the state of Mississippi, on June 30, 2008. The evaluation was rescheduled twice, however, the record from the lower court did not reflect whether the evaluation was conducted or whether a competency hearing pursuant to Rule 9.06 was ever held. James subsequent attorney during the trial did not request a psychiatric evaluation, nor did his appellate attorney.

The Court of Appeals remanded the issue to the lower court to determine whether James was the intended recipient of the evaluation and for a retrospective competency hearing, as sanctioned in *Wheat v. Thigpen*, 793 F.2d 621, 630 (5th Cir. 1986) (citing *United States v. Makris*, 535 F.2d 899, 904 (5th Cir. 1976)).

On November 1, 2011, the Newton County Circuit Court held a hearing to determine whether a psychiatric evaluation had been ordered for James prior to his trial and to determine, retrospectively, whether or not James was competent to stand trial. James' attorney at the hearing was John R. McNeal. Attorney Shawn Harris, James' initial trial attorney, testified, as well as Dr. Mark Webb.

Shawn Harris testified that he served as the public defender for Johnny James Jr. Harris testified that he requested a mental evaluation to determine whether James was competent to stand trial. He testified that the defense believed that James needed a psychiatric evaluation. Harris testified that he filed a petition to have James evaluated but that in the body of the petition another defendant was named due to a typographical error. Harris testified that it was his intention to have James evaluated for his mental competence to stand trial. Harris testified that an examination was done by Dr. Mark Webb whose ultimate opinion was that James was competent to stand trial. After the examination and report by Dr. Webb, another public defender took the case to trial. Harris testified that Chris Collins tried the case instead of Harris. Harris testified that the single count indictment for statutory rape was the only thing for which James was tried. Harris testified that he would have discussed the report with James, but that he would not have specifically made James aware of Rule 906 of the Uniform Circuit and County Court Rules, which provides that the defendant has a right to obtain independent psychiatric testimony

on his own behalf.

Dr. Mark Webb testified as an expert in the field of clinical and forensic psychiatry. He examined the defendant, Johnny James, Jr. to determine whether he was competent to stand trial in August of 2008. Dr. Webb also examined James pertaining to issues of insanity that would have existed on or about May 25, 2007, when the statutory rape occurred. He obtained a history of Johnny James, Jr. regarding use of alcohol and difficulties as a child. During the interview, James was very verbal and talked about his situation and his upcoming trial. He appeared to be competent to understand the proceedings. Dr. Webb testified that James was most definitely competent to assist his counsel in the preparation and exercise of his defense. (Tr. Supp. 29) James told Webb that he was able to read and write. During the interview, James was very detail oriented and was able to share with Dr. Webb the details of the particular day. Dr. Webb testified that he produces a summary of his opinions regarding James' competency to stand trial. Dr. Webb testified that he determined that James was competent to stand trial. Dr. Webb testified that James was able to understand the difference between right and wrong at the time of the alleged incident on May 25th of 2007. James told Webb that he knew that having sex with an underage girl was wrong and he denied having done it. (Tr. Supp. 29) It was Dr. Webb's expert opinion that James was competent to stand trial and was not criminally insane. Dr. Webb testified that he published a report dated August 4th, 2008, and that they typically sent the report to the DA, the clerk and the opposing attorney. Dr. Webb testified that on the day of the examination James was alert, logical and coherent, and showed a full range of affect. (Tr. Supp. 40)

After the hearing, the trial court issued its Order, holding:

The Defendant was present and represented by Counsel John R. McNeal, Jr., and the State was represented by the Office of the District Attorney for the Eighth Circuit Court District.

Both parties were given the opportunity to present evidence and argument on the issues remanded to this Court, and based on the hearing of evidence and arguments of counsel, the Court makes the following findings of fact:

1. The Defendant, Johnny James, Jr., was represented by Attorney Shawn Harris prior to the trial of this matter on August 19, 2008, the Circuit Court of Newton County, Mississippi.
2. Attorney Shawn Harris, did, in fact, intend to seek a psychiatric evaluation of this Defendant, Johnny James, Jr., in advance of the trial held in this matter on August 19, 2008.
3. The reference in the Defendant's Motion for Psychiatric Evaluation, specifically in Mr. Harris' supporting affidavit, to a person named "Ronald B. Evans" was a scrivener's error inadvertently posted [sic] into the document in the place of the intended name of this Defendant, Johnny James, Jr.
4. This Defendant, Johnny James, Jr., underwent a psychiatric evaluation by Dr. Mark Webb, a qualified and licensed medical doctor in the field of Forensic Psychiatry, on August 4, 2008. Following the evaluation, Dr. Webb formed the opinion that the Defendant Johnny James, Jr. Was competent to stand trial and was not criminally insane, that is, he understood the difference between right and wrong at the time of the alleged incident and he knew the quality of his actions.
5. Dr. Webb has the same opinion now as he held in August of 2008.
6. In August of 2008, Dr. Webb published his Independent Medical Evaluation which contained these opinions to this Court, the Defendant through counsel, and to the State through the District Attorney's Office.

Based on the foregoing findings of fact, the Court is satisfied (1) that the Defendant's initial attorney, Shawn Harris, did intend to seek a psychiatric evaluation of this Defendant, Johnny James, Jr., (2) that this Defendant Johnny James, Jr., was evaluated prior to trial by a medical doctor licensed and qualified in the field of Forensic Psychiatry, and (3) that this Defendant Johnny James, Jr., was competent to stand trial on August 19, 2008.

Trial Court's Order, October 11, 2011.

"The standard for competence to stand trial is whether the defendant has 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and

‘has a rational as well as factual understanding of the proceedings against him.’ ” *Snow v. State*, 800 So.2d 472, 489 (Miss.2001) (quoting *Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960)). In order to stand trial, a defendant must be (1) able to understand the proceedings against him, (2) able to communicate rationally with his attorney regarding the proceedings, (3) "able to recall relevant facts," (4) able to testify in his own defense if he so chooses, and (5) able to do all of the above in a manner "commensurate with the severity of the case." *Id.* at 489 (quoting *Howard v. State*, 701 So.2d 274, 279 (Miss.1997)).

Because Dr. Webb’s evaluation was requested and conducted prior to trial, the circuit court was able conduct an adequate hearing to retrospectively determine the James’ competency at the time of his trial. *Wheat v. Thigpen*, 793 F.2d 621, 630 (5th Cir. 1986). At the hearing, James’ bore the burden of proving his incompetency by a preponderance of the evidence. *Bruce v. Estelle*, 536 F.2d 1051, 1059 (5th Cir.) (*Bruce II*), cert. denied, 429 U.S. 1053, 97 S.Ct. 767, 50 L.Ed.2d 770 (1970). The testimony of Dr. Mark Webb regarding his psychiatric evaluation of James and the opinions he formed as a result of that evaluation clearly establish that at the time of trial James had sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and had a rational as well as factual understanding of the proceedings against him. James was not able to counter this evidence and therefore did not meet his burden of proof.

Further, Mississippi appellate courts will not overturn a trial court's determination of competency unless "the finding was manifestly against the overwhelming weight of the evidence." *Id.* (quoting *Emanuel v. State*, 412 So.2d 1187, 1189 (Miss.1982)). The evidence at the hearing was of sufficient weight to support the findings of the trial court that James was

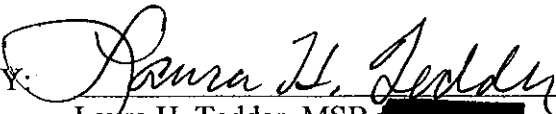
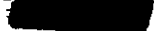
competent to stand trial.

CONCLUSION

Johnny James, Jr. was evaluated prior to trial at the request of his attorney to determine whether or not he was competent to stand trial. Any deficiency in the trial of Johnny James, Jr. for the statutory rape was remedied by the nunc pro tunc competency hearing held in the Newton County Circuit Court in accordance with the order of the Mississippi Court of Appeals. The trial court correctly held that James was competent to stand trial at the time of his trial. The jury's verdict and the rulings of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

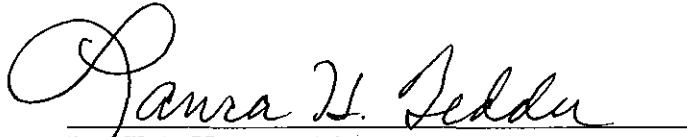
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **SUPPLEMENTAL BRIEF FOR THE APPELLEE** to the following:

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This the 16th day of December, 2011.



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