Affirmed and Opinion Filed July 22, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01255-CR

DONNIE EUGENE MILLS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 59th Judicial District Court
Grayson County, Texas
Trial Court Cause No. 70732

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichek
Opinion by Justice Partida-Kipness

Appellant Donnie Eugene Mills appeals his convictions for driving while intoxicated third or more, assault of a peace officer, and obstruction or retaliation. In a single issue, Mills contends the trial court abused its discretion by not sua sponte conducting an informal competency hearing during trial to determine Mills's competency to stand trial. We conclude the trial court did not abuse its discretion because the record contains no evidence suggesting that appellant was incompetent to stand trial. We affirm.

BACKGROUND

Mills was arrested for driving while intoxicated after being pulled over for speeding. Mills became belligerent toward the arresting officer, Chris Bell, while being transported to Texoma Medical Center (TMC) for a blood draw to determine his blood alcohol concentration (BAC). Mills yelled and cussed at Officer Bell during the drive to TMC. When they arrived at TMC, Officer Bell walked Mills through the emergency room to a secured area to obtain the warrant and conduct the blood draw. Mills continued to yell at Officer Bell, became more verbally and physically aggressive, and tried to break free of Officer Bell by jerking away from him and pushing Officer Bell into a wall. Mills also yelled that if Officer Bell took the handcuffs off of Mills, he would assault Officer Bell. After getting Mills onto a stretcher and calling for security, Mills rolled over and kicked Officer Bell on the left side of his face in the temple area. The kick stung Officer Bell and dazed him for a minute. Mills then yelled more threats at Officer Bell and said the officer's badge was the only thing protecting Officer Bell from Mills. These events were captured on Officer Bell's dash-cam and body-cam. The videos of the traffic stop and arrest were admitted into evidence at trial.

The State indicted Mills on three counts: (1) driving while intoxicated third or more, (2) assault on a peace officer, and (3) obstruction or retaliation. Mills pleaded true to two punishment enhancements. Before being indicted, Mills filed a signed waiver of his right to apply for court appointed counsel and chose to defend himself

during all pretrial proceedings and trial. After being indicted, he filed several hand-written form motions, including a motion for discovery and inspection of evidence, a motion for State to produce discovery documents, a motion for speedy trial, a motion to dismiss all charges, and motion to reinstate driver's license.

A. Pretrial proceedings

At his arraignment on May 23, 2019, the trial judge admonished Mills against representing himself, but Mills confirmed there was nothing the trial judge could do to convince him to enlist counsel. After the indictment was read, Mills pleaded not guilty to each of the three counts alleged in the indictment. The State read the two punishment enhancements and stated that the range of punishment for all three counts was 25 years to 99 years or life without eligibility for probation. Mills told the court he understood the range of punishment. The trial judge admonished Mills of the very serious nature of the charges and again asked Mills if the court could talk Mills out of representing himself. Mills responded, "No, sir," and told the court he did not want an attorney because his attorney "sold him out" in 1994 when he was convicted of assault on a police officer, and he would not have been convicted if he had represented himself. Mills was also very concerned with obtaining a speedy trial. He eventually agreed to have stand-by counsel appointed as long as the appointment order stated that the attorney could not delay the trial or make decisions for Mills.

At a motions hearing two weeks later, the trial judge again encouraged Mills to have an attorney represent him and asked Mills if he was still requesting to

represent himself. Mills confirmed that was correct. The trial judge then asked Mills to explain the roles of everyone in the courtroom. Mills pointed out the prosecutor, judge, court reporter, and bailiff and explained their roles correctly. Mills also stated that he had never been found incompetent by any court. The trial judge found Mills competent:

> I will find that you're competent and aware and you know to continue to support your right to represent yourself. I still encourage you that it's not always in your best interest to be your own attorney even if you aren't – if you're an attorney or not. But I won't spend much more time talking about that. But just initially we will do that.

Mills then asked the court why his BAC test results had not been received, objected to the delay, requested a speedy trial, and complained that he was not given adequate writing materials in jail and standby counsel had not received his correspondence. Mills engaged in a reasoned discussion with the trial judge on these matters, and the judge devised a plan acceptable to Mills regarding the writing materials and correspondence issues. Mills represented himself at three more hearings, including the September 12, 2019 pretrial hearing.

At the start of the pretrial hearing, the trial judge again asked Mills if he still wanted to represent himself, and Mills responded "Yes, Your Honor." Standby counsel remained present and seated with Mills. The trial judge then explained that he would hear each side's motions in limine and Mills's motion to dismiss or quash the indictments. The trial judge treated the motion to dismiss or quash as a motion to suppress after confirming at a prior hearing that Mills's complaint in the motion

was that the stop was unlawful. The trial judge also explained how the trial would work, discussing each stage of trial from voir dire through sentencing. Mills told the court he had no questions. The State read the amended indictment, and Mills stated that he understood the two prior convictions alleged by the State that allowed the State to charge him with a third or more DWI.

Mills had no questions regarding the motions in limine and, when asked if he understood the judge's ruling on particular motions in limine, Mills either answered yes or nodded that he understood the ruling. The court then heard the motion to suppress. Officer Bell testified for the State. The court admitted the dash-cam and body-cam videos for purposes of the hearing. Mills cross-examined Officer Bell by asking him three questions on two topics: whether it is normal to pull someone over for speeding and not write them a citation, and whether Officer Bell found alcohol in Mills's vehicle. The State presented argument in response, to which Mills replied that he looked at his speedometer and he was not speeding. The trial court denied the motion to suppress.

B. Voir Dire

Trial began eleven days later, on September 23, 2019. Before voir dire, the trial judge explained the voir dire process to Mills, and Mills said he understood the process. Mills again confirmed he wanted to represent himself and told the court that the judge could not talk him out of it. The trial judge told Mills he would respect

Mills's right to proceed pro se but ordered stand-by counsel to remain with Mills during trial. Mills made only two statements to the venire during voir dire:

> THE COURT: All right. Mr. Mills, do you have questions for the jury?
>
> MR. MILLS: I just have one. I just want to know if y'all are aware that the Bible's no longer allowed in the courtroom. That's the only one I wanted to state. Thank you.
>
> THE COURT: All right. If anybody has a response to that, they can have one. All right. Yes.
>
> PROSPECTIVE JUROR: Why would you like us to know that?
>
> [THE STATE]: Well --
>
> MR. MILLS: Well, I think it's important.

Mills moved to strike three jurors for cause. Although he agreed to release several jurors for cause requested by the State, he also objected to one of the State's requested strikes. The trial judge agreed with Mills and denied the State's request as to that juror. Although Mills did not use all of his peremptory strikes, the trial judge confirmed that Mills was aware that he had more strikes available to exercise. Mills did not object to the list of the jury and alternate.

C. Guilt-Innocence Phase

Mills did not make an opening statement after the State's opening statement. Mills did not object to the admission of any of the State's exhibits and did not question any witnesses. During the charge conference, Mills asked that the definitions of controlled substance, drug, and dangerous drug be removed from the charge, and the State agreed because the State only put on evidence of alcohol. Mills

had no other objections to the charge or verdict form. Then, before the jury returned from recess, Mills told the court he was ready for the trial to be over:

> THE COURT: So, if Mr. Mills chooses not to take the stand, then I think this is ready to go. There weren't any objections to it when we had it up on the board. And so, depending on timing, we might just go right into -- after you finish, we might go into me reading the charge and closing arguments, then. Or we might wait until tomorrow. So, it depends. Do you have a preference?
>
> [THE STATE]: We're ready to go today, Judge. That way, they can get the charge, deliberate today, and come back in the morning.
>
> THE COURT: Mr. Mills, what's your preference?
>
> MR. MILLS: I'm just ready to get it over, Your Honor.
>
> THE COURT: All right. Let's bring the jury in.

After the State rested, Mills chose not to give an opening statement, and he put on no evidence. He rested, the State closed, and Mills closed. The judge then read the charge to the jury with no objections from either side. The State presented its closing argument, and Mills declined to give a closing argument. The jury deliberated and returned a guilty verdict on all three counts.

D. Punishment Phase

The punishment phase proceeded in much the same way as the guilt-innocence phase. Mills made no opening statement, had no objections to the State's exhibits, presented no evidence, made no objections to the charge or verdict form, and made no closing argument. Mills pleaded true to the indictment's enhancement paragraphs and told the court he had no questions regarding the enhancements or punishment range as a result of pleading true. The jury returned a punishment verdict

of ninety-nine years on each count. The trial judge assessed judgment at ninety-nine years to run concurrently, and Mills did not object. This appeal followed.

STANDARD OF REVIEW

We review a trial court's decision not to conduct an informal competency inquiry into a defendant's competency to stand trial for an abuse of discretion. *Montoya v. State*, 291 S.W.3d 420, 426 (Tex. Crim. App. 2009), *superseded by statute on other grounds*, *Turner v. State*, 422 S.W.3d 676, 692 & n.31 (Tex. Crim. App. 2013); *Lindsey v. State*, 544 S.W.3d 14, 21 (Tex. App.—Houston [14th Dist.] 2018, no pet.). When determining whether the trial court has abused its discretion, we do not substitute our own judgment for that of the trial court; instead, we determine whether the trial court's decision was arbitrary or unreasonable. *Montoya*, 291 S.W.3d at 426. A trial court's firsthand factual assessment of a defendant's competency is entitled to great deference on appeal. *Ross v. State*, 133 S.W.3d 618, 627 (Tex. Crim. App. 2004) (citing *McDaniel v. State*, 98 S.W.3d 704, 713 (Tex. Crim. App. 2003).

APPLICABLE LAW

A defendant is presumed to be competent to stand trial and shall be found competent unless proved incompetent by a preponderance of the evidence. TEX. CODE CRIM. PROC. art. 46B.003(b). A defendant is incompetent to stand trial if he does not have (1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding or (2) a rational as well as factual

understanding of the proceedings against him. TEX. CODE CRIM. PROC. art. 46B.003(a). Either party may suggest by motion, or the trial court may suggest on its own motion, that a defendant may be incompetent to stand trial. TEX. CODE CRIM. PROC. art. 46B.004(a). The initial inquiry is informal and is required only if evidence suggesting incompetency comes to the trial court's attention. TEX. CODE CRIM. PROC. art. 46B.004(b)–(c); *Staples v. State*, No. 05-18-00177-CR, 2018 WL 6428152, at *1 (Tex. App.—Dallas Dec. 7, 2018, no pet.) (mem. op., not designated for publication); *Jackson v. State*, 391 S.W.3d 139, 141 (Tex. App.—Texarkana 2012, no pet.). The trial court, on its own motion, "shall suggest that the defendant may be incompetent to stand trial" if evidence suggesting that the defendant may be incompetent to stand trial comes to the trial court's attention. TEX. CODE CRIM. PROC. art. 46B.004(b); *Lindsey*, 544 S.W.3d at 21; *Lewis v. State*, 532 S.W.3d 423, 432 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd).

Under article 46B.004, a suggestion of a defendant's incompetency to stand trial may consist solely of a credible source's representation that the defendant may be incompetent. TEX. CODE CRIM. PROC. art. 46B.004(c-1). No further evidentiary showing is required, nor is the trial court required to have a bona fide doubt regarding a defendant's competency. *Id.* Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described by article 46B.024 or on any other indication that the defendant is

incompetent within the meaning of article 46B.003. *Id.* The relevant factors under article 46B.024 are:

> (1) the capacity of the defendant during criminal proceedings to:
>
> > (A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;
> >
> > (B) disclose to counsel pertinent facts, events, and states of mind;
> >
> > (C) engage in a reasoned choice of legal strategies and options;
> >
> > (D) understand the adversarial nature of criminal proceedings;
> >
> > (E) exhibit appropriate courtroom behavior; and
> >
> > (F) testify;
>
> (2) as supported by current indications and the defendant's personal history, whether the defendant:
>
> > (A) is a person with mental illness; or
> >
> > (B) is a person with an intellectual disability;
>
> (3) whether the identified condition has lasted or is expected to last continuously for at least one year;
>
> (4) the degree of impairment resulting from the mental illness or intellectual disability, if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and
>
> (5) if the defendant is taking psychoactive or other medication:
>
> > (A) whether the medication is necessary to maintain the defendant's competency; and
> >
> > (B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

Id. art. 46B.024.

ANALYSIS

On appeal, Mills does not contend he was incompetent to represent himself. Rather, Mills argues the trial court was put on notice that it should conduct an informal inquiry into his competency to stand trial because his "behavior became significantly more passive and bizarre" at voir dire when he asked the venire panel if they were aware the Bible is no longer allowed in the courtroom, and during trial when he "ceased to take any action whatsoever to defend himself." We disagree.

Nothing in the record suggests that Mills was incapable of rationally consulting with his stand-by counsel or rationally and factually understanding the proceedings against him. Although Mills chose not to present arguments or evidence at trial, the record reflects he understood the nature and consequences of the proceedings against him and communicated cogently with the trial judge throughout trial. Mills participated in voir dire, including discussions regarding striking jurors for cause, made legally correct objections to the jury charge, exhibited appropriate courtroom behavior, and clearly responded to the trial court's questions.

Mills provides the Court with no authority, and we have found none, to support a proposition that a pro se defendant's failure to actively participate at trial provides the necessary evidence to suggest incompetency that would require a trial judge to sua sponte hold a competency hearing during trial. A poor trial strategy is insufficient to suggest incompetence. *Lindsey*, 544 S.W.3d at 24 ("Lack of legal skill or mediocre legal strategy does not show a defendant is incompetent to stand trial.").

In *Lindsey*, a venire member told the judge that the defendant's rambling during voir dire concerned the venire member and caused the venire member to question whether the defendant was capable of representing himself. *Id.* The appellate court concluded that the comments did not go to Lindsey's mental competency and did not support a finding that the trial court abused its discretion by failing to inquire into Lindsey's competency to stand trial because the comments did not relate to "appellant's understanding of the proceedings or appellant's ability to communicate effectively with his legal advisor." *Id.* The same can be said for Mills's statement to the venire about the Bible, and his decision to remain silent during trial; neither of these pieces of "evidence" cited by Mills on appeal shows a misunderstanding by Mills of the proceedings or an inability to communicate effectively with his stand-by counsel.

Further, we disagree with Mills's depiction of his conduct at trial as being the "polar opposite" of his pretrial conduct. The record shows that Mills asked questions during pretrial proceedings, indicated his desire for a speedy trial, filed several handwritten, form pretrial motions, and asked Officer Bell three questions on cross-examination at the pretrial hearing. At trial, Mills participated in voir dire by making one statement, responding to a venire member's question, moving to strike a venire member for cause, and objecting to the State's motion to strike one venire member for cause. Mills also objected to certain definitions in the proposed jury charge and, as he did during pretrial proceedings, responded cogently and respectfully to the trial

court's questions during the proceeding. The record indicates Mills's demeanor, conduct, and strategy were essentially the same throughout the underlying proceedings and provides no evidence that Mills exhibited any sign of incompetence during trial. The trial court judge, however, was in the best position to determine whether that demeanor changed to an extent that his competency was in question and had ample opportunity to observe Mills's conduct and demeanor throughout the proceedings. The trial court could have reasonably concluded that Mills's decision not to present evidence or argument in his own defense was similar to his mostly silent pretrial demeanor.

The trial court could have also reasonably concluded that his decision was not fueled by a lack of rational understanding, but rather a desire to try the case quickly, which is consistent with Mills's pretrial requests for a speedy trial. When the judge asked if Mills preferred to push through to present the charge and closing arguments at the end of the first day of trial or wait until the following morning, Mills responded, "I'm just ready to get it over, Your Honor." From this statement, the trial judge could have reasonably inferred that Mills's attitude and strategy arose from a desire to get through trial and see what the jury would do with the facts brought against him. While this may have been a poor trial strategy, it was not illustrative of incompetence to stand trial such that the trial judge should have conducted an informal competency hearing. We conclude that the evidence in this case did not suggest that Mills was incompetent to stand trial and, thus, did not trigger the trial

court's duty to conduct an informal inquiry. Affording the trial court the great deference it is entitled to, we conclude the court did not abuse its discretion by failing to conduct an informal competency inquiry.

CONCLUSION

Having concluded the trial court did not abuse its discretion by failing to sua sponte conduct a competency hearing during trial, we overrule appellant's sole point of error. Accordingly, we affirm the trial court's judgment.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DONNIE EUGENE MILLS, Appellant	On Appeal from the 59th Judicial District Court, Grayson County, Texas
No. 05-19-01255-CR V.	Trial Court Cause No. 70732.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Partida-Kipness. Justices Myers and Reichek participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 22nd day of July, 2020.