

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3717-16T1

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

CARLOS CAMPOS,

Defendant-Respondent.

Submitted December 12, 2017 – Decided December 29, 2017

Before Judges Carroll and Leone.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
12-01-0156.

Esther Suarez, Hudson County Prosecutor,
attorney for appellant (Erin M. Campbell,
Assistant Prosecutor, on the brief).

Joseph E. Krakora, Public Defender, attorney
for respondent (John Douard, Assistant Deputy
Public Defender, of counsel and on the brief).

PER CURIAM

The State appeals from a March 30, 2017 order dismissing the indictment against defendant Carlos Campos with prejudice on the basis that he was not competent to stand trial. The court also

ordered that defendant be civilly committed pursuant to N.J.S.A. 30:4-27.10. We affirm substantially for the reasons stated by Judge John A. Young, Jr. in his comprehensive written opinion that accompanied the order.

The record before us discloses that defendant was exhibiting abnormal behavior and experiencing delusions before the crimes that form the basis of this appeal. In the summer of 2010, defendant began acting paranoid, reported hearing voices, and believed people were out to kill him. On January 18, 2011, following a psychiatric evaluation, defendant was diagnosed as having "depressive psychosis." Three days later, a social worker diagnosed him with "adjustment disorder with mixed disturbance of emotions and conduct." On March 16, 2011, defendant was diagnosed with delusional disorder and it was recommended that he begin treatment.

On August 16, 2011, defendant was arrested and charged with stabbing to death his parents and three-year-old niece. The next day, two psychiatrists at Jersey City Medical Center conducted a screening and determined defendant was mentally ill and a danger to others. Consequently, defendant was involuntarily committed to Anne Klein Forensic Center (AKFC) on August 18, 2011.

In January 2012, a Hudson County grand jury indicted defendant for three counts of murder, N.J.S.A. 2C:11-3(a)(1) or N.J.S.A.

2C:11-3(a)(2); three counts of unlawful possession of a weapon, N.J.S.A. 2C:39-5(d); and three counts of possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d).

Kenneth J. Weiss, M.D., a forensic psychiatrist, evaluated defendant on April 30, 2012. In his May 18, 2012 report to defendant's attorney, Dr. Weiss indicated defendant "has a serious mental illness, which was present prior to the incident, immediately thereafter (supporting civil commitment), and currently." Dr. Weiss opined that, "because of his ongoing delusions and grossly deficient judgment, [defendant] would not be able to participate meaningfully in his defense and he would not be able to assist counsel with a reasonable degree of rational understanding of his legal position." He concluded, "[it] is possible that [defendant's] condition can be improved with treatment, but such treatment would have to take place in a facility such as AKFC."

On July 30, 2012, the court ordered defendant to undergo an evaluation at AKFC to determine his fitness to stand trial. Defendant was evaluated by Peter D. Paul, Ph.D., a licensed psychologist employed at AKFC, on October 4, 2012, and November 14, 2012. Dr. Paul opined "defendant does not meet the criteria to be considered competent to stand trial as defined in N.J.S.A. 2C:4-4." He added, "[b]ecause [] defendant's psychiatric symptoms

clearly were present prior to the current crimes, it is not likely that he is feigning psychiatric symptom[s] to avoid criminal prosecution. He has been consistent in his symptom presentation."

Judge Young conducted a competency hearing on January 15, 2013. Dr. Paul testified defendant was not competent because he lacked the ability to participate in his own defense due to his delusional thinking pattern. He opined defendant needed inpatient psychiatric treatment, and he could not predict whether defendant "can ever become competent based upon his delusional thinking and his delusional belief system. . . ." The next day, Judge Young issued an oral opinion in which he found Dr. Paul "very credible" and concluded defendant was not competent to stand trial because of his inability to assist in his defense. Based on Dr. Paul's testimony, the judge further found it "possible that this type of illness can be stabilized through medication and treatment, which may result in [defendant] regaining competency." On January 17, 2013, the judge entered an order continuing defendant's commitment at AKFC.

On September 5, 2013, AKFC psychiatrist Douglas Smith, M.D., found defendant was not fit to stand trial "due to ongoing delusional ideas regarding his case." However, he did find it "probable that, with continued treatment and medication

adjustments, [defendant] could attain fitness in the foreseeable future."

Judge Young held a second competency hearing on January 2, 2014, at which the parties stipulated to Dr. Smith's report. Based on the undisputed evidence, the judge found defendant was not competent and, in a February 19, 2014 memorializing order, he continued defendant's commitment at AKFC.

AKFC psychiatrist Elizabeth Hogan, M.D., diagnosed defendant with schizophrenia in a June 10, 2014 competency evaluation report. She concluded:

In summary, while [defendant] has an adequate factual understanding of criminal proceedings, he continues to have significant limitations in his ability to assist counsel and meaningfully participate in his own defense. His limitations are due to his symptoms of mental illness including delusional thinking and suspiciousness. Specifically, he has rigid and likely delusional beliefs about the evidence against him and how he can win his case. These symptoms continue to limit his ability to have meaningful discussions with his counsel in the preparation of his defense. For these reasons[,] he is unfit to proceed, as he has been in previous evaluations.

However, in the time since his last competency evaluation, his delusional thinking has improved to a limited extent and is overall less rigid than it has been in the past. While he still has poor insight into his mental illness and delusional beliefs, he is less rigid with respect to the delusion that he is on a TV show (although he still cannot

identify the belief as being a delusion). Given his progress, it is my opinion that with continued treatment he can be restored to fitness in the reasonably foreseeable future.

Defendant's third competency hearing took place on June 12, 2014. The parties stipulated to Dr. Hogan's report. The next day, Judge Young entered an order memorializing his finding that defendant had not regained his fitness to proceed to trial, and continued defendant's commitment at AKFC.

Defendant's treating psychiatrist at AKFC, Joanna Bajgier, D.O., authored the next competency evaluation report on November 14, 2014. Dr. Bajgier concluded defendant's "psychosis improved" since his previous evaluations, that he was presently competent to stand trial, and he would likely remain competent if he continued treatment.

The defense again had defendant evaluated by Dr. Weiss in December 2014. Dr. Weiss found defendant was experiencing homicidal ideations, and he communicated that finding to Dr. Bajgier's supervisor, Dr. Hogan. In a March 2, 2015 addendum to her earlier report, Dr. Bajgier opined that defendant remained competent to stand trial. She also noted, "[a]lthough I believe [defendant] is malingering symptoms at this time, it is also my opinion that [defendant] does suffer from [s]chizophrenia. His symptoms are treated and not currently active." Dr. Weiss reviewed

this addendum and, in a March 17, 2015 report, repeated his opinion that defendant was not malingering and remained incompetent to stand trial pursuant to N.J.S.A. 2C:4-4(g).

The defense also arranged to have defendant evaluated by psychiatrist Daniel P. Greenfield, M.D. Dr. Greenfield submitted reports dated May 11, 2015, and July 29, 2015, agreeing with Dr. Weiss that defendant was not competent and not malingering.

Judge Young conducted a fourth competency hearing on August 4 and 5, 2015, at which Doctors Bajgier, Weiss, and Greenfield testified consistent with their reports. The judge issued an oral opinion on October 6, 2015, in which he noted Dr. Bajgier had been on leave and was therefore unable to meet with defendant between May and August 2015. The judge found Dr. Bajgier's conclusions that defendant was presently competent and malingering were not supported by the evidence and were "extensively refuted by the testimony of Dr. Weiss and Dr. Greenfield," whose opinions he found credible and reliable. The judge did credit Dr. Bajgier's testimony that, after defendant's medication was adjusted in August 2014, he was competent in November 2014. Although the judge found defendant's competency was short-lived, this did lead him to conclude there was a substantial probability defendant could regain competency within the foreseeable future.

Dr. Bajgier authored additional reports on April 4, 2016, and July 28, 2016, in which she again concluded defendant was competent and malingering. In her view, defendant "understands what is happening in court and that the outcomes are unrelated to his claim of the Illuminati controlling the case." On June 1, 2016, Dr. Greenfield submitted an updated report in which he again opined that defendant "ha[s] a stable fixed delusion about the determinative role of the Illuminati and of his being in a television show." That fixed delusion impaired defendant's ability to participate rationally with defense counsel and rendered him incompetent to stand trial for the reasonably foreseeable future.

Defendant's fifth and final competency hearing was held on August 2, 2016. Once again, Dr. Bajgier testified extensively for the State, as did Dr. Greenfield on behalf of defendant. Judge Young also engaged defendant in a colloquy, during which defendant exhibited an understanding of the charges; the respective roles of his attorney, the prosecutor, and the judge; and his right to a jury trial. However, defendant told the judge: it was "hard to accept advice" from his attorney; he believed he was in a reality show; he did not wish to "snitch" on the Illuminati, who ran the world, including the court system; he talked to the Illuminati on the radio about whether he had to kill; and before he was arrested

the Illuminati "follow[ed] [him] around . . . in white Comcast vans everywhere [he] went." Following this colloquy, defense counsel informed the court he had difficulty "communicating with [defendant] with a reasonable degree of rational understanding" during the five-year period he represented defendant.

Following oral argument on November 3, 2016, Judge Young issued a comprehensive twenty-page written opinion on March 30, 2017, dismissing the indictment with prejudice. The judge concluded:

After careful review of the record and in light of the evidence supporting the conclusion that [d]efendant is not malingering, I find Dr. Bajgier's conclusion that [d]efendant is malingering not credible. I find Dr. Greenfield's conclusion that [d]efendant is not malingering credible, particularly in light of the [c]ourt's questioning of [d]efendant. As such, I find the State has failed to establish [d]efendant is competent and I specifically find [d]efendant is not competent to stand trial.

The dialogue the [c]ourt engaged in with [d]efendant demonstrates that he cannot discuss the case or his defense in more depth with his attorney because he believes it would be considered "snitching" on the Illuminati. His belief that the Illuminati controls the court system and the world ultimately means they control the outcome of his case, regardless of his interaction with his defense attorney and participation in his defense. His responses illustrate that he is not rationally competent to stand trial. The State has failed to establish [d]efendant's competency by a preponderance of the evidence.

Judge Young next looked to the factors enumerated in N.J.S.A. 2C:4-6(c) to determine whether defendant's criminal charges should continue to be held in abeyance or instead be dismissed. In weighing those factors, the judge determined:

During the course of defendant's case, save for only one very short period in 2014, he has never exhibited signs of substantial improvement in terms of his rational competence despite different medications and dosages. On October 6, 2015, this [c]ourt found . . . that Dr. Bajgier's conclusion on November 14, 2014[,] that [d]efendant was competent[,] to be credible insofar that [d]efendant was competent for a short window of time in November 2014[,] due to a change in medication. Despite a finding of brief competency in November 2014, I find that the short period of competency . . . was an anomaly and it is not substantially probable that [d]efendant will regain competency. One month after Dr. Bajgier's 2014 report, [d]efendant reported to Dr. Weiss that he was experiencing homicidal ideations, indicating that he was no longer competent. Approximately twenty months have elapsed from the short window of competency in November 2014 to the fifth competency hearing in August 2016[,] and in that time [d]efendant has not shown any signs of regaining competency.

Dr. Greenfield testified and has consistently found that it is not likely that [d]efendant will regain rational competency in the foreseeable future. Moreover, these delusions began prior to the commission of the present offenses. In light of these facts, [d]efendant's likelihood of regaining competency is far from probable. This is the fifth competency hearing over a period of five years for this [d]efendant. [] Defendant has never been found competent by this [c]ourt.

Defendant's involuntary commitment began two days after his arrest on August 18, 2011[,] and continued until October 12, 2011, at which time he was transported to the Hudson County Correctional Facility. He remained there until he was transported back to AKFC on April 16, 2013. He has been at AKFC ever since. He has been institutionalized at AKFC for a total period of approximately three years and ten months. Despite this extended term of institutionalization and the services provided at AKFC to restore him to competency, [d]efendant has never regained competency.

"In weighing the effects of delay on the defendants and prosecution, the judge should consider availability of witnesses, preservation of evidence, and the extent to which the delay may have resulted from causes attributable to the defense, including the several professional examinations made after the issue of competency was raised by defendant." [State v. Moya, 329 N.J. Super 499, 515 (App. Div. 2000)]. Here, the passage of time from the date of the offense to present is over five years. This affects [d]efendant's and the State's ability to call witnesses and preserve evidence. Because memories fade with time, it would be difficult for a prospective witness to recall events leading up to the offense. It would also impact [d]efendant's ability to present a defense. [The] [d]efense asserts that witnesses who could testify as to [d]efendant's behavior prior to the offense would be crucial to an insanity defense, demonstrating to this [c]ourt that [d]efendant would be prejudiced if the case were to proceed to trial in the distant future. Additionally, defense counsel asserted at the fifth competency hearing that after representing [d]efendant for over five years he still does not have a firm grasp of the facts of the case because he cannot effectively communicate with [d]efendant due

to [d]efendant's delusions. The passage of time exacerbates this problem as it affects [d]efendant's ability to recall events relevant to a defense, which further prejudices [] [d]efendant. There is no evidence presented that the delay in prosecution can be attributed to the defense.

This [c]ourt acknowledges the seriousness of the charges against [d]efendant and the public's interest in prosecuting serious offenses. However, the public interest is not served by depriving [] [d]efendant of his [c]onstitutional [r]ights. In light of the fact that [d]efendant has been incompetent for over five years and Dr. Greenfield's conclusion to a degree of reasonable medical certainty that he will never regain competence, the factors weigh in favor of dismissal.

It is not substantially probable that [d]efendant will regain his competence in the foreseeable future. The charges are dismissed with prejudice pursuant to N.J.S.A. 2C:4-6(c). Defendant presently poses a substantial risk to the safety of others in the community.

Judge Young ordered defendant to be civilly committed pursuant to N.J.S.A. 30:4-27.10 upon dismissal of the indictment. The State's appeal followed.

On appeal, the State contends the trial court improvidently dismissed the indictment. Specifically, the State asserts the trial court either misconstrued or failed to consider all the factors enumerated in N.J.S.A. 2C:4-6(c) in dismissing the charges against defendant rather than holding them in abeyance. We disagree.

"The test for competency to stand trial arises from basic concepts of due process." State v. Purnell, 394 N.J. Super. 28, 47 (App. Div. 2007); State v. M.J.K., 369 N.J. Super. 532, 547 (App. Div. 2004). When a defendant is tried while incompetent to stand trial, that defendant has been deprived of his due process right to a fair trial. State v. Cecil, 260 N.J. Super. 475, 480 (App. Div. 1992).

In a competency proceeding, the State has the burden of proving competence to stand trial by a preponderance of the evidence. State v. Gorthy, 226 N.J. 516, 530 (2016). At a minimum, the State must show that the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him. Purnell, 394 N.J. Super. at 47 (citing Dusky v. United States, 362 U.S. 402, 402 (1960)).

The test for competency to stand trial in New Jersey is codified in N.J.S.A. 2C:4-4, which provides in part: "No person who lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures." N.J.S.A. 2C:4-4(a). The proofs must establish that the defendant understands his presence in a courtroom facing criminal

charges; the roles of the judge, prosecutor and defense attorney; his rights and the consequences of waiver of the same; and his ability to participate in his own defense. N.J.S.A. 2C:4-4(b).

Our Supreme Court has recently noted:

An important component of the inquiry is the question whether the defendant has the capacity to assist in his or her own defense. See N.J.S.A. 2C:4-4(a) (barring prosecution of person lacking capacity to "assist in his own defense"); N.J.S.A. 2C:4-4(b)(2)(g) (identifying "the ability to participate in an adequate presentation of his defense" as factor in competency determination). . . . The question of a defendant's ability to assist in his or her defense turns on whether his or her mental condition precludes meaningful interaction with his or her attorney with respect to the pending charges and the trial.

[Gorthy, 226 N.J. at 532-33].

When, as here, a court finds a defendant not competent to stand trial, there is a presumption that the charges against him or her "shall be held in abeyance." N.J.S.A. 2C:4-6(c).

The presumption can be overcome only if the court determines, using the factors set forth in this subsection, that continuing the criminal prosecution under the particular circumstances of the case would constitute a constitutionally significant injury to the defendant attributable to undue delay in being brought to trial.

In determining whether the charges shall be held in abeyance or dismissed, the court shall weigh the following factors: the defendant's prospects for regaining competency; the period

of time during which the defendant has remained incompetent; the nature and extent of the defendant's institutionalization; the nature and gravity of the crimes charged; the effects of delay on the prosecution; the effects of delay on the defendant, including any likelihood of prejudice to the defendant in the trial arising out of the delay; and the public interest in prosecuting the charges.

[Ibid.]

Our review of a trial court's competency determination must be "typically, and properly, highly deferential." M.J.K., 369 N.J. Super. at 548 (quoting Moya, 329 N.J. Super. at 506). We do not review the factual record to determine how we would decide the matter if we were a court of first instance. State v. Johnson, 42 N.J. 146, 161 (1964). Moreover, a trial court's determination on the subject of competency will be sustained if there is sufficient supporting evidence in the record. Purnell, 394 N.J. Super. at 50.

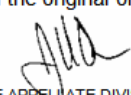
We are satisfied that Judge Young's findings that defendant was neither competent to stand trial nor likely to regain his competence in the foreseeable future are adequately supported by the record. Here, the judge relied heavily on the expert testimony of Dr. Greenfield, which he found more credible and reliable than that of the State's expert, Dr. Bajgier. It is well-settled the judge had the right to credit Dr. Greenfield rather than Dr. Bajgier, notwithstanding the latter's status as defendant's

treating psychiatrist. Where qualified experts present opposing opinions on disputed issues, the trier of fact may accept the testimony or opinion of one expert and reject the other. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 85-86 (App. Div. 1961). This principle flows out of the well-known proposition that jurors, or a judge in a bench trial, have the best "opportunity to hear and see the witnesses and to get a 'feel' for the case that the reviewing court [cannot] enjoy." Twp. of W. Windsor v. Nierenberg, 150 N.J. 111, 132 (1997) (quoting State v. Whitaker, 79 N.J. 503, 515-16 (1979)).

Contrary to the State's assertion, Judge Young carefully considered all the factors enumerated in N.J.S.A. 2C:4-6(c). He determined, based upon all the evidence before him, that defendant would suffer undue delay in being brought to trial, resulting in a constitutionally significant injury warranting dismissal of the indictment. See State v. Gaffey, 92 N.J. 374, 389 (1983) (holding "a criminal indictment shall be dismissed with prejudice under N.J.S.A. 2C:4-6(c) when it is determined that an adequate period of time has elapsed during which the defendant has been institutionalized and has remained unfit to be tried"). Given our highly deferential standard of review, we find no basis to disturb this determination.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION