

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE, )  
)  
Plaintiff, )  
)  
)  
)  
v. )  
)  
)  
)  
LANCE LEATHERBERRY, )  
)  
Defendant. )

Cr. ID. No. 1608019237 and  
1608020091

Date submitted: April 18, 2018  
Date decided: May 1, 2018

**COMMISSIONER’S DECISION ON DEFENDANT’S COMPETENCY TO  
STAND TRIAL**

Allison Abessinio, Esquire, Deputy Attorney General, Delaware Department of Justice, 820 N. French St. 7<sup>th</sup> Floor, Wilmington, DE, 19801. Attorney for the State.

Dana L. Reynolds, Esquire, LAW OFFICES OF DANA L. REYNOLDS, LLC., 30C Trolley Square, Wilmington, DE, 19801. Attorney for Defendant.

**MANNING**, Commissioner:

Pending before the Court is the question of Mr. Leatherberry's competency to stand trial in the Superior Court for the above captioned criminal cases. Following numerous psychiatric evaluations and an evidentiary hearing on April 18, 2018, the issue is now ripe for decision.

### **Facts and Procedural History**

Mr. Leatherberry is a young man now 19 years of age. His life-long struggles are well documented in the medical records. Briefly, records indicate that he was born full-term and healthy. However, around the age three, Mr. Leatherberry suffered a permanent traumatic brain injury ("TBI") as a result of abuse by his mother's paramour, who also killed his younger brother in the same incident. Mr. Leatherberry's behavior deteriorated dramatically following this abuse and he became problematic both at home and at school. Mr. Leatherberry suffered from significant learning and behavioral problems and received special education services as a student with an intellectual disability and an emotional disturbance. Mr. Leatherberry made little progress in school and recent testing indicates academic achievement at the 2<sup>nd</sup> to 3<sup>rd</sup>-grade level. Due to his behavioral difficulties at home, Mr. Leatherberry now lives under supervision with Connections Community Support Program in a group home in Smyrna. Mr. Leatherberry is currently facing charges in the Superior Court for Theft of a Motor Vehicle, Conspiracy Second

Degree, Attempted Robbery First Degree, Aggravated Menacing and Carrying a Concealed Deadly Weapon (firearm).

Mr. Leatherberry's legal troubles have been ongoing since the time of his first arrest as a juvenile in May 2008. Since that time, Mr. Leatherberry has been evaluated for competency to stand trial on seven different occasions, most recently on April 9, 2018, by Abraham J. Mensch, Ph.D. Lane's troubled history is well-summarized in Dr. Mensch's most recent report so I will not recapitulate it in great detail here. Sufficient it to say, Dr. Much has opined that he believes that Mr. Leatherberry is not competent to stand trial due to his neurocognitive and neurobehavioral defects.<sup>1</sup> The State has submitted evaluations from two different doctors at the Delaware Psychiatric Center ("DPC") who have opined that Mr. Leatherberry, despite his limitations, is presently competent to stand trial.<sup>2</sup>

Mr. Leatherberry's evaluation history can be summarized as follows:

The first evaluation was conducted on May 16, 2001, when Mr. Leatherberry was 12 years old, by Dr. Heather Alford of the Division of Prevention and Behavioral Health Services ("DPBHS"). Dr. Alford concluded that due to Mr. Leatherberry's neurocognitive defects his ability to understand the proceedings and participate in them was substantially limited.

---

<sup>1</sup> Defense's Exhibit 4.

<sup>2</sup> State's Exhibit 1 and 2.

The second evaluation was conducted on September 14, 2015, by Dr. Ben Lungen, also of DPBHS. Dr. Lungen found Mr. Leatherberry competent to stand trial, opining that he had a sufficient factual understanding of the legal process and the charges against him to assist in his own defense.<sup>3</sup>

The third evaluation was conducted on June 10, 2016, by Dr. Daniel Jones, also of DPBHS. Dr. Jones concluded that, overall, Mr. Leatherberry demonstrated most of the required capacities for competency to proceed to trial.<sup>4</sup>

The fourth evaluation was completed by Dr. Mensch on April 26, 2016. At that time, Dr. Mensch opined that Mr. Leatherberry “did not evidence the capacities needed for adjudicative competency.” Dr. Mensch completed a re-evaluation of Mr. Leatherberry on May 5, 2017. In this evaluation, Dr. Mensch opined, again, that although Mr. Leatherberry possessed some of the competency abilities, he still had significant impediments to assisting his attorney with his defense.

The fifth evaluation was completed at DPC by Douglas S. Roberts, Psy.D, on October 27, 2017. Dr. Roberts’ report starts by outlining a detailed history of Mr. Leatherberry’s legal, family, traumatic, education, medical and psychiatric history. Dr. Robert’s administered various cognitive assessments which confirmed that Mr.

---

<sup>3</sup> I note that Dr. Much criticized Dr. Lungen’s conclusion, stating that he felt the evaluation was “somewhat cursory” and that Mr. Leatherberry’s neurocognitive defects “might affect competency to assist his attorney.”

<sup>4</sup> Again, Dr. Much criticizes Dr. Jones evaluation, arguing that Mr. Leatherberry’s performance was a “mere recitation of events and not indicative of a rational understanding.”

Leatherberry was intellectually disabled, although Dr. Roberts' classified it as "mild." Dr. Roberts utilized the "McGarry Questions" for purposes of determining Mr. Leatherberry's understanding of the legal process and competency to stand trial.<sup>5</sup> Specifically, Dr. Roberts found that (1) Mr. Leatherberry had an understanding of the charges against him, (2) Mr. Leatherberry generally understood the possible penalties associated with the charges against him and also understood the concept of probation, (3) Mr. Leatherberry understood that the State would need evidence to convict him, but doubted that any video evidence would show his face, (4) Mr. Leatherberry was able to correctly identify and generally explain the role of the defense attorney, prosecutor, judge, jury and that he was the defendant, (5) Mr. Leatherberry understood the concept of a witness and that if a witness lied on the stand that he could discuss that fact with his lawyer, (6) Mr. Leatherberry recognized the need to behave in court and that he could be removed if he failed to do so, (7) Mr. Leatherberry understood the concept of a plea bargain and that by pleading guilty he would not have a trial, (8) Mr. Leatherberry's ability to plan legal strategy was significantly limited, however, Mr. Leatherberry did recognize that he could tell the jury he did not do anything wrong, (9) Mr. Leatherberry possessed a basic ability to present relevant testimony and to stay on topic, (10) there was no evidence that Mr. Leatherberry was operating in self-defeating or self-serving manner, and

---

<sup>5</sup> Dr. Robert's cites to *State v. Shields*, 593 A.2d 986, 1012 (Del. Super. 1990).

(11) that Mr. Leatherberry had a good relationship with his attorney, that he trusted her, and that he knew that he could tell her “his business” so “she can work with me.”

Dr. Roberts noted that Mr. Leatherberry did not appear to be suffering from any active mental health symptoms (e.g. schizophrenia) that would interfere with his ability to work with his attorney and that he was able to retain information that had been provided to him by staff during the evaluation. Dr. Robert’s opined that Mr. Leatherberry, although intellectually limited, was competent to stand trial. Dr. Robert’s opinion is as follows:

Regarding his legal capacities, Mr. Leatherberry demonstrated an awareness of the basic nature of the allegations against him and possible consequences he might face if convicted. He demonstrated adequate factual understanding of courtroom proceedings, including the roles of courtroom personnel as well as expectations regarding appropriate courtroom behavior. Behaviorally and according to his self-report, he demonstrated sufficient ability to conform his behavior to courtroom expectations. His rational decision making skills appear intact.

The sixth evaluation was also completed at DPC, but by Andrew Donohue, DO, on February 7, 2018. Dr. Donohue’s findings and conclusion were consistent with Dr. Robert’s opinion. In Dr. Donohue’s report, he noted that “[Mr. Leatherberry] also thought that the concept of an alibi applied to his case. He stated

that at the time of the offense ‘I was home and my mom was there [too].’ He understood that this could be relevant to his defense.”<sup>6</sup>

The seventh and final evaluation was completed by Dr. Mensch on April 12, 2018, and was the third time he had evaluated Mr. Leatherberry. Dr. Mensch’s report criticized the methodology and findings of the prior reports that opined that Mr. Leatherberry was competent. As to the ultimate question, Dr. Mensch opined that:

This examiner believes that Mr. Leatherberry presents with deficits in the capacities needed to proceed to trial that are long-standing, significant, and neurocognitive and neurobehavioral in nature, and therefore are extremely unlikely to improve with competency restoration training. While Mr. Leatherberry may be able to repeat some of the procedures in a trial, and the roles of the courtroom participants, this does not necessarily mean that he will acquire the cognitive abilities needed to proceed.

### **Legal Standard for Competency**

The State bears the burden to establish a defendant’s competency to stand trial by a preponderance of the evidence.<sup>7</sup> The Delaware Supreme Court has held that “competency [is] based on whether or not the defendant has sufficient present ability to consult with his lawyer rationally and whether he has a rational as well as

---

<sup>6</sup> State’s Ex. 1 at p.5.

<sup>7</sup> See *Tucker v. State*, 105 A.3d 990, \*2 (Del. 2014).

a factual understanding of the proceedings against him.”<sup>8</sup> Additionally, the United States Supreme Court has also added the requirement that a defendant be able to assist in preparing his defense.<sup>9</sup> “Competency does not necessarily turn upon the absence or presence of any particular factor.”<sup>10</sup> Additionally, it is important to note that the competency threshold is quite low. “It is neither very demanding nor exacting. The standard by which a defendant's competency is measured is not that of the reasonable person but rather of the average criminal defendant.”<sup>11</sup> Moreover, “[d]ue process requires that the defendant be afforded a fair, not a perfect trial, and that he be able to consult with his lawyer with a reasonable, not a perfect degree of rational understanding.”<sup>12</sup> Delaware courts have consistently cited and utilized the *McGarry* and *Guatney* factors to assist in the competency determination.<sup>13</sup>

---

<sup>8</sup> *Id.*

<sup>9</sup> See *Drope v. Missouri*, 420 U.S. 162, 171 (1975).

<sup>10</sup> *Tucker* at \*2.

<sup>11</sup> *Id.*

<sup>12</sup> *State v. Wynn*, 490 A.2d 605, 610 (Del.Super.1985).

<sup>13</sup> See *State v. Shields*, 593 A.2d 986, 1010 (Del.Super.1990)



## Analysis

During the hearing, both Dr. Roberts and Dr. Donohue testified consistent with their written reports. They did not dispute the prior assessments of Mr. Leatherberry's neurocognitive deficits and intellectual disabilities diagnosis. Dr. Mensch testified on both direct and cross-examination that Mr. Leatherberry has an adequate factual understanding of the legal proceedings, but feels Mr. Leatherberry is not competent to stand trial due to deficits in cognitive functioning and executive decision-making abilities. Throughout Dr. Mensch's reports and testimony he stressed how Mr. Leatherberry's neurocognitive defects may impede his ability to proceed at trial because a defendant "must be able to assist during the trial process, both as an information provider *and* a decision maker."<sup>14</sup>

Although I recognize and appreciate Dr. Mensch's concerns as valid, I believe he is conflating the role of attorney and defendant to an unnecessary extent and thereby imposing a higher than warranted standard. To be competent to stand trial, a defendant does not need to possess the same level of cognitive and decision making ability as his or her lawyer—who is there to represent the defendant and make necessary legal decisions and act in the client's best interest. It is not necessary under the current state of the law that the defendant have the same level of knowledge or understanding of the trial process as does the lawyer or a person who

---

<sup>14</sup> Defense Exhibit 1, p. 22.

wishes to represent him or herself. I grant Dr. Mensch the fact that Mr. Leatherberry is incapable of representing himself at trial due to his intellectual limitations; but what he is capable of doing, however, is understanding the process and assisting his lawyer in his defense—and that is all that is fundamentally required. For example, as discussed in Dr. Donohue’s evaluation, Mr. Leatherberry recognized the concept of an alibi defense and that such information could be used by his lawyer to assist in his defense. From a competency standpoint, it is not necessary that Mr. Leatherberry knows how to employ an alibi defense at trial—that is what he has a lawyer for.

As to Dr. Mensch’s concerns, there is nothing in the record to indicate that Mr. Leatherberry is incapable of making the basic decisions a defendant is entitled to make in a criminal case. To the contrary, Mr. Leatherberry clearly has an understanding of the plea bargaining process, his right to assert his innocence and his right to testify if he wishes. The fact that Mr. Leatherberry may not understand all of the various nuances associated with pleading guilty or testifying at trial is the very reason he has counsel to advise him—it does not mean he is not competent to stand trial.

## Conclusion

Upon consideration of the applicable legal standards and the evidence submitted by the parties and for the foregoing reasons, I find that the State has established by a preponderance of the evidence that Mr. Leatherberry is **competent to stand trial.**

**IT IS SO ORDERED**

  
\_\_\_\_\_  
Commissioner

oc: Prothonotary  
cc: all counsel via e-mail