

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

TYRONE B. JOHNSON

Defendant.

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ID No. 0304014609

Submitted: July 27, 2004
Decided: September 28, 2004

MEMORANDUM ORDER

On this 28th day of September 2004, upon consideration of Defendant's Motion to Determine Competency, it appears to the court that:

1. Tyrone B. Johnson ("Johnson") has filed a Motion for a Competency Hearing to determine whether he is competent to stand trial pursuant to 11 Del. C. § 404(a). A hearing was held June 7, 2004 and July 23, 2004. For the reasons set forth below, the court finds Johnson competent to stand trial.
2. Johnson is charged with Robbery First Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Possession of a Deadly Weapon by Person Prohibited. The alleged incidents that lead to these charges

occurred April 22, 2003. Johnson was initially charged with Shoplifting, Aggravated Menacing, and Criminal Trespass Third Degree, but those charges were dropped and the current charges were returned by the Grand Jury.

3. The test of competency to stand trial is set forth at 11 *Del.C.* § 404(a) as follows:

Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or mental defect, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own behalf or to instruct counsel on his behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial.

This standard has been construed to require that a defendant be able (1) to consult with defense counsel rationally, (2) to assist in preparing his defense, and (3) to have both a rational and factual understanding of the proceedings.¹ In determining competency, a court must consider all of the circumstances, and base its decision upon the facts of the particular case.² Competency does not turn upon the absence or presence of any particular factor.³ The burden is upon the State to establish the defendant's competency by a preponderance of the evidence.⁴

¹ *State v. Shields*, 593 A.2d 986, 1010 (Del. Super. 1990); *see also State v. Reed*, 2004 Del. Super. LEXIS 132 at *2.

² *Shields*, 593 A.2d at 1005, *see also Reed* at *2.

³ *Reed* at *2.

⁴ *Diaz v. State*, 508 A.2d 861, 863 (Del. 1986).

4. At the hearing, Kathryn M. Sheneman, Psy.D, J.D. (“Dr. Sheneman”), testified regarding an evaluation she performed on Johnson on June 17, 2003. Dr. Sheneman also testified regarding her observations of Johnson on other occasions when he was at the Delaware Psychiatric Center related to his seizure disorder. Abraham J. Mensch, Ph.D. (“Dr. Mensch”) testified at the hearing regarding an evaluation he performed on Johnson on February 28, 2004. Dr. Sheneman testified she also relied upon Dr. Mensch’s report in forming her opinion regarding Johnson’s competency to stand trial. A report from Sylvia Foster, M.D., who evaluated Johnson from August to December 2003 at the Delaware Psychiatric Center, was also provided to the court. Records of Johnson’s Christiana Care emergency room visits and his records from the Devereux Foundation⁵ were also provided.

5. Both Dr. Sheneman and Dr. Mensch agreed that Johnson has mental deficiencies. There is also no dispute that Johnson was born with hydrocephalus, and has suffered seizures. Johnson also has a history of poor compliance with his medication regimen, leading to seizures and the Christiana Care emergency room visits.⁶ That Johnson has significant learning disabilities is also not disputed. Both

⁵ The Devereux Foundation is a residential treatment center in suburban Philadelphia for adolescents with neurological impairments.

⁶ Medical records of 33 emergency room visits between November 2, 2001 and May 17, 2002 were provided to the court. A review indicates virtually all of the visits were a result of Johnson’s having or possibly having had a seizure. Blood chemistry reports included in these

experts agree that Johnson has a verbal IQ of 72, placing him on the borderline of mildly mentally retarded. Both experts find Johnson has no “traditional” psychiatric conditions – that is, he is not psychotic, schizophrenic or bipolar. Both experts found Johnson was capable understanding simple, concrete facts and directions, but that he often had difficulties with complex issues. Both experts found Johnson to be alert and oriented as to person, place, and time.

6. In the present case, the court is presented with the classic “battle of the experts.” Dr. Mensch, based on the results of his testing, concluded Johnson is not competent to stand trial. Dr. Sheneman, relying on the virtually the same information as Dr. Mensch, including Dr. Mensch’s report, concluded Johnson is competent to stand trial.

7. The court has reviewed the results of Johnson’s testing, including a tape recording of Dr. Mensch’s testing session. The court has also considered the testimony of Dr. Sheneman as she related interactions with Johnson when he was at The Delaware Psychiatric Center for evaluation of his seizure disorder.

8. The court finds the present case to present facts very similar to those at issue in *Reed*.⁷ As in *Reed*, the crime with which Johnson is charged is not complex, nor are there expected to be a large number of witnesses. The court finds

records indicated no or low therapeutic levels of Johnson’s prescribed medications at the time of the visits.

⁷ 2004 Del. Super. LEXIS 132.

Johnson able to articulate the events surrounding his alleged offenses. The court does note that no one has apparently attempted to explain to Johnson why his charges were changed from simple shoplifting to robbery, but finds that issue moot. The court finds Johnson capable of assisting his defense in that Johnson is able to articulate the defense that he “didn’t do it.” The court finds it not beyond reason that a defendant, convinced of his own innocence, would refuse to plead guilty to a lesser crime.

9. The issue before the court, therefore, is whether Johnson’s deficiencies are such that he cannot be considered competent to stand trial under the standard articulated above. This court, as did the court in *Reed*, finds Johnson’s limitations can be adequately addressed by (1) explaining to Johnson in simple and concrete terms the nature and process of the proceedings, including the plea bargaining process, and (2) taking frequent recesses during trial to enable Johnson’s attorney to review and explain the testimony.⁸

⁸ *See Id.* The court was also provided Johnson’s “rap sheet” which showed he had previously pled guilty to other, minor, offenses. Based on this, as well as testimony of the experts at the competency hearing, the court concludes Johnson is capable of understanding and accepting the concept of being punished when he has done something wrong. As noted above, the court finds it reasonable that a person would be reluctant to plead guilty to any crime, even a lesser one than charged, when he feels he is innocent of any wrong-doing.

10. It is this court's reasoned opinion that, under the totality of the circumstances, Johnson is competent to stand trial.

IT IS SO ORDERED.

Calvin L. Scott, Jr.
Superior Court Judge