

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-000402-MR  
AND  
NO. 2017-CA-000403-MR

SHANE YATER

APPELLANT

v. APPEALS FROM HOPKINS CIRCUIT COURT  
HONORABLE JAMES C. BRANTLEY, JUDGE  
ACTION NO. 15-CR-00120 & 13-CR-000221

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KRAMER, D. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: These are consolidated appeals from a judgment of conviction and sentence by the Hopkins Circuit Court. The Appellant, Shane Yater, argues that the trial court clearly erred in finding him competent to stand trial and by denying his motion to redact evidence of an uncharged crime from his Pre-

Sentence Investigation (PSI) report. Finding no clear error or abuse of discretion on either ground, we affirm in both appeals.

On December 18, 2013, a Hopkins County grand jury returned an indictment charging Yater with three counts of possession of matter portraying a sexual performance by a minor. Subsequently, both the Commonwealth and Yater's counsel filed motions for a competency evaluation. Following a hearing on April 14, 2015, the trial court found Yater competent to stand trial.

Thereafter, Yater entered a conditional guilty plea to all three counts. Pursuant to RCr<sup>1</sup> 8.09, Yater reserved his right to appeal from the trial court's competency determination. In exchange for his guilty plea, the Commonwealth recommended sentences of five years imprisonment on each count, to run concurrently for a total of five years, but consecutively to a previously-imposed sentence of one year. The trial court imposed the recommended sentence.

In his first appeal, Yater challenges the trial court's competency finding. Yater separately appeals from the trial court's denial of his motion to exclude evidence of uncharged crimes from his PSI report. This opinion will set forth additional facts on these issues as necessary.

Yater first argues that the trial court clearly erred in finding that he was competent to stand trial. A defendant who is deemed incompetent may not

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

stand trial as a matter of due process under the United States Constitution. *Woolfolk v. Commonwealth*, 339 S.W.3d 411, 421 (Ky. 2011) (citing *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903, 43 L. Ed. 2d 103 (1975)). A trial court's determination of competency must be based on the preponderance of the evidence. *Chapman v. Commonwealth*, 265 S.W.3d 156, 174 (Ky. 2007). The test for whether a defendant is competent to stand trial is whether he 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." *Dusky v. United States*, 362 U.S. 402, 402, 80 S. Ct. 788, 789, 4 L. Ed. 2d 824 (1960). The trial court is in the best position to determine whether a defendant is competent to plead guilty. *Centers v. Commonwealth*, 799 S.W.2d 51, 54 (Ky. App. 1990).

Competency determinations are findings of fact. *Chapman, supra* at 174 n.52. Accordingly, we review a trial court's competency determination for clear error and will reverse only when that finding is not supported by substantial evidence. *Jackson v. Commonwealth*, 319 S.W.3d 347, 349 (Ky. 2010) (citing *Chapman, supra* at 174). Substantial evidence is such relevant evidence as a "reasonable mind would accept as adequate to support a conclusion." *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003).

At the hearing, Yater presented the report and testimony of Dr. Eric Drogan, while the Commonwealth replied on the report and testimony by Dr. Robert Sivley. Dr. Drogan and Dr. Sivley each conducted interviews, testing and evaluations of Yater to determine his competency to stand trial. They both agreed that Yater has an intellectual disability with an IQ near 69. Both also noted that Yater was found to be wholly disabled in a guardianship proceeding.

Their primary disagreement concerned the validity of Yater's test results from the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR). While both administered the test, Dr. Drogan expressed concerns that the CAST-MR test does not comply with the two-prong test for competency used in Kentucky. He also stated that the questions on the test are multiple choice, with certain answers that make no objective sense, and certain questions with potentially more than one correct answer. Dr. Drogan also testified that Yater's responses to certain questions indicated that he does not fully understand the role of his defense counsel or how to properly assist in his own defense. Based upon this and other evidence, Dr. Drogan was of the opinion that Yater was not competent to stand trial.

Dr. Sivley did not acknowledge any disagreement over the use or weight of the CAST-MR test. Rather, based on Yater's responses, Dr. Sivley concluded that Yater could satisfactorily describe the roles of people in the court

system and that he could participate in his own defense. Dr. Sivley agreed that some of Yater's responses were clearly incorrect. However, he interpreted those responses as naivete, and stated that Yater could learn the right answers and could participate in his own defense with assistance of counsel.

At the conclusion of the hearing, the trial court acknowledged that Yater's competency was "a close call." However, the court noted that the reports from both Dr. Drogan and Dr. Sivley "suggest that Yater has at least a rudimentary understanding of the charges against him, the judicial process, and the people involved in that process." The court also noted that the "questions which Yater failed to answer correctly most involve failures in decision making which can be resolved through planning and communicating with his attorney." Consequently, the trial court found that Yater failed to meet his burden of proving that he is not competent to stand trial.

Yater's objection to the trial court's conclusion is based mostly on the weight which it gave to Dr. Sivley's report over that of Dr. Drogan. Absent some showing that Dr. Sivley relied on incompetent evidence or applied an improper standard, the trial court was in the best position to judge the weight and credibility of the expert witnesses. And while we agree with Yater that the findings made in a guardianship proceeding under KRS<sup>2</sup> 387.500 *et seq.* were relevant in this case,

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<sup>2</sup> Kentucky Revised Statutes.

that inquiry is different from a determination of his competency to stand trial in a criminal matter. Hence, the trial court was not bound by the conclusions in that matter. Under the circumstances, we cannot find that the trial court's assessment of the evidence was clearly erroneous.

In his second appeal, Yater argues that the trial court erred by denying his motion to redact certain information from his PSI. The PSI included a factual narration of an uncharged allegation of rape against him. Yater maintains that inclusion of the allegation may affect his eligibility for parole. The Commonwealth responds that the PSI included an accurate description of the police report concerning the allegation. The Commonwealth notes that the trial court sentenced Yater in accord with its recommendation, so Yater has not been prejudiced by inclusion of the allegation in the PSI.

KRS 532.050(2)(d) directs that the PSI shall include, "[a]ny other matters that the court directs to be included." Those matters may include material relating to dismissed charges. *Aaron v. Commonwealth*, 810 S.W.2d 60, 62 (Ky. App. 1991). Yater provides no basis for challenging the accuracy of the allegation set out in the PSI. Furthermore, the parole board has broad discretion in hearing evidence, including dismissed counts of an indictment and allegations of criminal activity for which the prisoner has not even been charged. *Id.* Therefore, we

cannot find that the trial court abused its discretion by denying Yater's motion to redact the information from the PSI.

Accordingly, we affirm the judgment and orders of the Hopkins Circuit Court.

ALL CONCUR.

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