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NOT TO BE PUBLISHED

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

NO. 2019-CA-000572-MR

JAQUEZE BEHANAN

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE PATRICIA M. SUMME, JUDGE  
ACTION NO. 17-CR-00171

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND GOODWINE, JUDGES.

GOODWINE, JUDGE: Jaqueze Behanan appeals a Kenton Circuit Court judgment imposing a one-year-and-ten-month sentence based on a conditional guilty plea to first-degree sexual abuse. Behanan argues the trial court incorrectly ruled that he was mentally competent to stand trial and enter a plea. After careful review, we affirm.

## **BACKGROUND**

On February 23, 2017, the Commonwealth of Kentucky indicted Behanan for first-degree rape.<sup>1</sup> Behanan's counsel filed a motion on May 24, 2017, asking the trial court to determine whether Behanan was competent to stand trial. The trial court granted the motion, entering an order for examination to determine competency to stand trial and responsibility for criminal conduct the same day.

The trial court sent Behanan to the Kentucky Correctional Psychiatric Center (KCPC), where he underwent a competency and criminal responsibility evaluation. Once at KCPC, Behanan was assigned to Dr. Steven Sparks, Ph.D., ABPP, for all testing and evaluations conducted. In his evaluation, Behanan underwent seven separate tests, which graded his cognitive ability, intellectual intelligence level, and competency. Dr. Sparks memorialized all findings in a written report, along with his own conclusions and determinations, which the parties stipulated.<sup>2</sup>

On September 18, 2017, the trial court held a competency hearing. During the hearing, Dr. Sparks testified. Based on his interviews with Behanan,

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<sup>1</sup> The Commonwealth added the charge of first-degree sodomy on January 18, 2018.

<sup>2</sup> Behanan did not include Dr. Sparks's report in the record on appeal. Therefore, we "must assume that the omitted record supports the decision of the trial court." *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985).

along with his evaluations and test results, Dr. Sparks concluded that Behanan: (1) meets the criteria for an intellectual disability, but not for a mental illness; (2) was competent to appreciate the nature and consequence of the proceedings against him; and (3) was competent to participate rationally in his own defense. He explained that he met with Behanan twice, and after the first meeting, he determined Behanan was not competent to stand trial. He made this determination based on Behanan's test results and responses to questioning. But Dr. Sparks further testified that he underwent a series of educational/competency improvement classes with Behanan. Dr. Sparks met with Behanan again. After this meeting, Dr. Sparks found Behanan competent—based on increased test scores and his ability to learn, process, recall, and retain information conveyed during his competency classes.

Dr. Sparks testified that he asked Behanan a series of questions about the roles of those in the courtroom, which factored into his competency determination. Behanan's descriptions of those roles are as follows:

(1) Prosecutor – “Prostecutor [sic] job is to the crime that you did guilty. What you do in the crime, you guilty about it to the judge.”;

(2) Judge – “The judge she look and decide. She hear and decide what the charge about . . . . She sit there and listen to what case about and what prosecution say and defender say. She decides to get agreement with twelve people. Decide what we do. He guilty, we give him the punishment he needs that is on the crime.”;

(3) Jury – “The twelve people sit back and decide if you are innocent and guilty. And they get together and ask questions about the case. They come up from what they know.”

Dr. Sparks also explained that Behanan understood the nature of the offenses for which he was charged, which involved a sexual crime against a child. When talking about these offenses, Behanan denied the allegations and stated, “I am not a pervert.”

At the close of his examination, the Commonwealth asked Dr. Sparks if it was his opinion that Behanan was competent to stand for trial, participate in his defense, or take a plea. Dr. Sparks responded, “[I] thought it was a very close call, and I do think he has legitimate deficits. But taking all the information into account . . . I think he does meet the minimum criteria for competency.” Based on this hearing, the trial court deemed Behanan competent to stand trial or take a plea agreement.

On February 2, 2018, Behanan’s counsel filed a renewed motion for competency, which the trial court granted. The second competency hearing spanned three days: August 20, 2018; September 17, 2018; and October 1, 2018. Once again, the Commonwealth called Dr. Sparks. The parties questioned Dr. Sparks on August 20 and September 17. During his testimony, Dr. Sparks explained that he met with Behanan for the third time on July 11, 2018. To fully evaluate Behanan, Dr. Sparks reviewed Behanan’s charts, medical records, and

school records, as well as interviewed nurses, Behanan's psychiatrist, and Behanan. He also testified that Behanan underwent five more tests. Three of the five tests showed Behanan to be competent, indicating he was in the intellectual range with those in the normative sample who exhibit an intellectual disability but had been found competent. All five tests indicated improvement and showed Behanan could retain certain information.

In Dr. Sparks's opinion, nothing changed regarding Behanan's competency. From meeting with him a third time, Dr. Sparks testified that Behanan: (1) had an adequate, basic understanding of the court proceedings; (2) understood the offenses charged against him; (3) adequately understood the roles of the participants in the proceedings; (4) understood the differences between a guilty and not guilty verdict, including the outcomes of each; and (5) comprehended the potential outcomes of trial and whether he would be incarcerated. With this in mind, Dr. Sparks stated that Behanan's intellectual ability does affect his ability to stand trial, but those disadvantages could be overcome with special accommodations.

Dr. Sparks explained that certain accommodations could be made for Behanan during the trial, which would alleviate any cognitive issues he may have with the proceedings. Specifically, Dr. Sparks recommended offering Behanan more time consulting with his attorney. He believed this would be the most

beneficial accommodation. He also recommended a slower pace from the trial court regarding instructions and pleas, an opportunity to clarify larger words, an overall slower pace of trial, *i.e.*, breaks every ten to fifteen minutes to consult and clarify with his attorney, and opportunities to express information he wants to convey with his attorney, as well as similar time for his attorney to ensure he understands any information being conveyed.

At the close of his testimony, Dr. Sparks espoused that his greatest concern was Behanan's hypothetical reasoning, as far as accepting a plea versus going to trial. But he reaffirmed that these concerns could be overcome with accommodations. In sum, he believed that Behanan would rely more on his attorneys to give him sound guidance, but thought he had the capacity to engage in that type of reasoning in a basic fashion.

On October 1, 2018, the competency hearing continued. Behanan took the stand and testified. When asked why he was in the courtroom, he stated he was there for a "hearing test," but quickly corrected the answer to hearing. He was able to distinguish between his trial and the hearing, answering that he was at a hearing, which was not the same as a trial. A considerable amount of time was spent on certain aspects of Behanan's life. He testified that he had a job where he loaded, unloaded, and delivered ice bags. He underwent training to do the job, and he explained that was how he learned to do the job. The job was an 8:00 a.m. to

4:00 p.m. shift and Behanan clocked in and out of work with his boss. He testified that he would give his paycheck to his mother but understood that she took the check to the bank and deposited it into his bank account. While he does not pay any bills, he explained that he used money from his paycheck to buy food and clothes.

The questioning next turned to what he did at home when he was not working. Behanan admitted that he could not cook on a stove but was able to cook things, such as dinner, in a microwave. He testified that he took two medications for seizures and headaches. While he could not name the medication brands, he testified that one of the medications was for preventing him from having seizures during the night while he slept, that he took the medications on his own, and that the dosage was three pills in the morning and three at night.

When asked how he spent his time, he answered playing video games and on his phone. He explained that he had a PlayStation 4 game system and that he enjoyed playing basketball, baseball, and Call of Duty games on it. He further told the attorney how to turn on the game system with his controller and activate each game he played.

Behanan also maintained an active social media presence, having a Facebook, Instagram, and YouTube account. Pertaining to each account, he testified that he operated and accessed them by entering his e-mail and password,

which would log him in. When discussing his YouTube account, he told his attorney about the user profile he made, how he made videos and uploaded them and posted them to his YouTube profile by using his phone, and that nobody taught him how to do either of those things. And when he was not playing games, on his phone, or on the computer, Behanan stated that he liked to read. He testified that he liked reading about basketball but also read “chapter books” about history.

Behanan was also questioned about how he spent his time while in jail. He said that he would read his Bible and workout. Later in his testimony, he stated that he made friends in jail with people he grew up with as a child. These friends taught him how to be careful in jail and showed him how to play different card games.

The attorneys also questioned Behanan about the court proceedings and crimes charged against him. When asked if he knew what charges were against him, he replied that he was charged with rape and assault and that the penalty range was between 20-50 years. When asked why he was in the courtroom, he responded for a hearing to see if he could stand for trial. The examination then shifted to a discussion of pleas. When Behanan’s attorney asked him what a plea was, he answered that it is when somebody asks you to take a less deal, that it was the client’s choice to take the deal, and that his attorneys could not force him to go to trial. His attorney then asked him what he would do if he was



forced to take a plea and go to prison. Behanan responded that he would either take the deal or go to trial. Later, Behanan's attorney posed the question of what he would do if he told him that he did not have a choice and the attorney made the choice for him. Behanan said that he would decide to make the best out of his case, as well as look at the case and come up with something to do at trial or take a plea deal. But his attorney then said to him, "What if I told you that you had to do it, would you?" To which Behanan responded, "Yes."

At the close of Behanan's attorney's examination he asked, "If prosecutors [ask] you a . . . question, and they want you to agree with that question, will you agree with them because they want you to?" Behanan responded that he would disagree with them. The Commonwealth then asked him what would happen if a person wanted him to not take a guilty plea, but his attorneys wanted him to take it. He answered that he could not remember. The Commonwealth followed up on that answer with the following question: "Are there times when you cannot remember things and you ask your attorneys what it means?" He answered, "Yes." The Commonwealth then asked, "Are they able to explain it to you?" And once again, he responded with "Yes." He also told the Commonwealth that it was easier for him to understand things by asking a lot of questions and having things in writing, so he could read it. When asked about other accommodations, Behanan said that it would be helpful to have time to talk to his

attorney when asked things he did not understand. Finally, he was asked, “If a prosecutor asked you a question, and you did not understand what it meant, could you ask your attorney what it meant?” He told the Commonwealth, “Yes,” he would ask his attorney what something meant, and he would tell the prosecutor he did not understand the question and could he ask his attorney for help.

The trial court concluded the hearing with a series of its own questions. It asked Behanan if he knew who sits in the jury box, to which he responded, “The twelve people.” Then it asked him what the jury did, and he answered, “To say guilty or not guilty.” Finally, Behanan agreed with the trial court that the jury “listens to what he has to say,” “listens to what other people say,” and “they make a decision.” When asked if all of that was right or wrong, Behanan answered, “That is right.”

Based on its findings from the second competency hearing, the trial court issued an order on November 5, 2018, ruling Behanan was competent to stand trial or negotiate a plea. The court noted that “there will need to be accommodations for the defendant to assure his engagement and understanding of either a plea or trial. On December 28, 2018, Behanan entered a conditional guilty plea to the amended charge of first-degree sexual abuse. On March 21, 2019, the trial court entered a judgment and sentence on plea of guilty, sentencing Behanan to one year and ten months in prison. This appeal followed.

## **STANDARD OF REVIEW**

We review a trial court's competency determination under a clearly erroneous standard, reversing only when its finding is not supported by substantial evidence. *Jackson v. Commonwealth*, 319 S.W.3d 347, 349 (Ky. 2010) (citing *Chapman v. Commonwealth*, 265 S.W.3d 156, 174 (Ky. 2007)). The test for substantiality of evidence is whether the evidence, when taken alone, or in the light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable persons. *Kentucky State Racing Comm'n v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

## **ANALYSIS**

The question before us today is whether the trial court was clearly erroneous in its ruling that Behanan was competent to stand trial or take a plea. It is important to note that in these situations, it is not the job of the appellate court to factor into its ruling what we would have done differently. Under a clearly erroneous standard, it is our duty to decide whether the trial court based its ruling on substantial evidence, meaning the evidence could provoke conviction in the mind of a reasonable person. Like Dr. Sparks testified, this case is a "very close call." From our review, this close call falls in favor of the trial court.

Under Kentucky law, a defendant is legally incompetent to enter a plea if he "lacks the capacity to appreciate the nature and consequences of the

proceedings against him . . . or to participate rationally in his . . . defense[.]”  
Kentucky Rule of Criminal Procedure (RCr) 8.06; Kentucky Revised Statute  
(KRS) 504.060(4). The constitutional right to a fair trial prohibits the trying of  
incompetent individuals. *Pate v. Robinson*, 383 U.S. 375, 384, 86 S. Ct. 836, 841,  
15 L. Ed. 2d 815 (1966). RCr 8.06 mandates that if a court has reasonable grounds  
to believe the defendant might not be competent, it is bound to follow procedures  
dictated by KRS 504.100. That statute requires that the defendant must then be  
evaluated by a court-appointed psychiatrist or psychologist and then be afforded a  
competency hearing in court.

Here, the trial court had substantial evidence to justify a ruling that  
Behanan was competent. Although Dr. Sparks diagnosed Behanan with an  
intellectual disability, he determined that this did not prevent him from being  
competent to stand trial. In fact, he found that Behanan was competent to  
appreciate the nature and consequence of the proceedings against him and  
competent to participate rationally in his own defense. An intellectual disability  
alone is not a *de facto* reason to find a defendant not competent to stand trial or  
take a plea.

Our review of a competency determination must be based on the trial  
court’s ruling and the evidence of competency presented to it at a time immediately  
preceding its ruling. We must base our decision on the facts and evidence

presently before the trial court in its latest ruling. *See Keeling v. Commonwealth*, 381 S.W.3d 248, 262 (Ky. 2012). Furthermore, the defense bears the burden to prove the defendant is incompetent under a preponderance of the evidence standard. Behanan did not meet this standard.

In our view, there was enough evidence for the trial court to conclude Behanan had the “capacity to appreciate the nature and consequences of the proceedings against him . . . [and] to participate rationally in his . . . defense[.]” First, his testimony indicates he understood the nature and consequences of the proceedings against him. He was able to recall the charges brought against him, penalty ranges for the charges, and the functionality of a hearing, trial, and all participants to both events, *i.e.*, prosecutors, defense attorneys, witnesses, the judge, and the jury.

Second, he could participate rationally in his defense. We agree with Dr. Sparks that Behanan’s hypothetical abilities to reason function on an intellectually lower level, but all concerns regarding his intellectual disability subside with certain accommodations—which the trial court provided. These accommodations included: (1) pauses every twenty minutes for Behanan’s counsel to confer with Behanan; and (2) pauses in trial when Behanan gets distracted. Furthermore, in addressing Behanan’s counsel’s concerns that Behanan may merely rely on their advice when taking a plea, the trial court noted a “structure

[of] the time and questions of the plea,” assuring Behanan “[was] aware of the process and consequences of his plea.”

### **CONCLUSION**

Based on the foregoing reasons, we hold: (1) the trial court was not clearly erroneous in ruling Behanan competent to stand trial or take a plea; and (2) this ruling was based on substantial evidence, including Dr. Sparks’s and Behanan’s testimony, as well as Dr. Sparks’s stipulated report. Therefore, we affirm the judgment and sentence of the Kenton Circuit Court.

ALL CONCUR.

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