

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

RENDERED: AUGUST 27, 2009

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2008-SC-000081-MR

DATE 9/17/09 Kelly Klaber P.C.  
APPELLANT

ROBERT FUQUA

V. ON APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE SHEILA R. ISAAC, JUDGE  
NO. 07-CR-00130

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

**AFFIRMING**

On November 24, 2006, at approximately 9:30 p.m., Appellant, Robert Fuqua, entered "Mr. Cheeks Club," a restaurant and bar located on Winchester Road in Lexington. When he arrived, the security team was not yet in place to pat people down as they entered the club. Appellant was wearing red gloves past his wrists and was acting "unusual." At various times, Appellant would make odd physical movements, make faces at other patrons, mutter to himself, and dance alone in front of a mirror. On two separate occasions, Appellant exited Mr. Cheeks Club to smoke a cigarette, and both times he was patted down by Francis Baker before re-entering the club. During both pat-downs, no weapon was found on Appellant.

As the evening progressed, Appellant's bizarre behavior continued. Sometime between 11:00 and 11:30 p.m., Francis Baker approached Appellant

and told him to leave the other patrons alone. Appellant complied and displayed no attitude or behavior which indicated that he would cause any problems. Appellant then approached the bar where Mr. Cheeks was working and ordered a beer. After some problem developed with paying for the beer, Appellant began to smoke marijuana. Mr. Cheeks quickly called for security, and Appellant was asked to leave. Appellant then put on a jacket and was escorted out of the building. None of the security team at any time placed their hands on Appellant.

As Baker opened the door to the street, Appellant quickly confronted him and stood face to face with the security guard. Baker thought he saw Appellant take a swing at him and reflexively put his hands up to defend himself. Immediately thereafter, Appellant exited the club and fled down the street. As Appellant ran away, Baker felt a “warm sensation” and saw blood out of his peripheral vision. Baker placed his hand on his throat and his thumb slipped into a hole. Baker was quickly taken to the University of Kentucky Medical Center, where it was discovered that his jugular vein had been almost completely severed and the nerve to his voice box lacerated.

On May 4, 2007, during a status hearing, Appellant’s defense counsel explained to the court that, due to Appellant’s emotional outbursts, he found it difficult to communicate with his client. Defense counsel indicated to the trial court that Appellant was possibly suffering from some sort of anger management problem. At this point, Appellant told the court that he had been

previously evaluated by the Kentucky Correctional Psychiatric Center and was found mentally competent.

On May 25, 2007, Appellant appeared in court for a hearing with new counsel. Appellant's new counsel indicated that he had read the mental evaluation report prepared by Dr. Martin Smith. According to Dr. Smith, Appellant was a "slam dunk" for competency. Defense counsel then offered Appellant the choice of calling Dr. Smith to testify during the hearing or stipulating to Dr. Smith's testimony, which would be the same as that reported in the evaluation. Appellant chose the latter, and defense counsel offered no additional evidence regarding Appellant's competency to stand trial. The trial court, based upon the stipulated report, held that Appellant was competent to proceed and issued a written order to that effect. The case ultimately went to trial on December 19, 2007.

Appellant was found guilty of first-degree assault and of being a second-degree persistent felony offender. The jury recommended an enhanced sentence of 20 years based on the persistent felony offender status. He now appeals the final judgment as a matter of right, Ky. Const. § 110(2)(b).

On appeal, Appellant contends that he either did not receive a competency hearing, that the competency hearing he received was not sufficient, or that he improperly waived the competency hearing. These issues are unpreserved, but Appellant asks this Court to review the matter for manifest injustice pursuant to RCr 10.26.

According to KRS 504.100(1), if a trial court has reasonable grounds to believe that a defendant is incompetent to stand trial, the court must appoint a psychologist or psychiatrist to evaluate the defendant and report on his mental condition. After the filing of the report, KRS 504.100(3) requires the court to “hold a hearing to determine whether or not the defendant is competent to stand trial.” Section 3 of KRS 504.100 is mandatory. Mills v. Commonwealth, 996 S.W.2d 473, 486 (Ky. 1999).

We do not agree with Appellant that the competency hearing was waived or that no hearing was held. This Court has explained that a formal evidentiary hearing is not always required to satisfy the due process requirements established by Section 3 of KRS 504.100. “In certain instances, judicial economy will dictate that an ‘abbreviated’ hearing should follow. For example, counsel may agree to stipulate to certain evidence, such as a mental health expert's finding of competency, and the trial court could then make a finding of competency based upon those stipulations.” Quarels v. Commonwealth, 142 S.W.3d 73, 83 n.3 (Ky. 2004). However, if the trial court still has reasonable grounds to believe that competency may be an issue, a formal hearing is required. Id.

The requirements of KRS 504.100(3) are met when “the Commonwealth and the defendant [are] given an opportunity to present evidence on the issue of competency and an opportunity to cross-examine the psychologist or psychiatrist who prepared the report.” Gibbs v. Commonwealth, 208 S.W.3d

848, 853 (Ky. 2006). Here, the trial court was presented with the competency evaluation prepared by Dr. Smith, and both the Commonwealth and Appellant were allowed to call witnesses. Defense counsel indicated that while his normal method would be to have Appellant testify at the hearing, he decided not to do so after Dr. Smith noted that the issue of competency was a “slam dunk.” Defense counsel then gave Appellant the option of either calling Dr. Smith to testify, where his testimony would mirror the findings of the report, or to simply stipulate to the report’s findings. Appellant stipulated to the accuracy of the report and chose to offer no additional evidence or call witnesses to dispute the evaluation. The Commonwealth likewise declined the opportunity to call witnesses or offer any additional evidence. Thereafter, the trial court reviewed the report and determined that Appellant was competent to stand trial.

The trial court had no reasonable grounds to believe that Appellant’s competency was at issue, which would require a more formal hearing. See Gilbert v. Commonwealth, 575 S.W.2d 455, 456 (Ky. 1978) (“However, these reasonable grounds ‘must be called to the attention of the trial court by the defendant or must be so obvious that the trial court cannot fail to be aware of them.’” (internal citations omitted)). It seems clear that the competency evaluation was ordered to quell concerns arising from prior counsel’s indication of Appellant’s emotional outbursts when discussing the case. The stipulated report indicated that Appellant was competent to stand trial, and Appellant has

failed to establish any other factual basis which would have caused the trial court to experience reasonable doubt as to his competency. Under the circumstances of this case, the requirements of KRS 504.100(3) were satisfied. There was no error.

For the reasons set forth herein, the judgment of the Fayette Circuit Court is hereby affirmed.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Susan Jackson Balliet  
Assistant Public Advocate  
Department of Public Advocacy  
100 Fair Oaks Lane, Suite 302  
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

Jack Conway  
Attorney General

Susan Roncarti Lenz  
Assistant Attorney General  
Office of Attorney General  
Criminal Appellate Division  
1024 Capital Center Drive  
Frankfort, KY 40601-8204