19-P-55 Appeals Court

COMMONWEALTH vs. JAMES M. CORBETT.

No. 19-P-55.

Barnstable. February 4, 2020. - July 14, 2020.

Present: Rubin, Kinder, & McDonough, JJ.

Due Process of Law, Competency to stand trial, Mental health. Mental Health. Incompetent Person, Criminal charges. Practice, Criminal, Competency to stand trial, Defendant's competency, Psychiatric examination. Evidence, Competency.

Complaint received and sworn to in the Barnstable Division of the District Court Department on May 26, 2015.

The case was tried before Christopher D. Welch, J.

Joseph Maggiacomo, III, for the defendant.
Laura Marshard, Assistant District Attorney, for the Commonwealth.

RUBIN, J. The defendant was convicted of strangulation or suffocation, in violation of G. L. c. 265, § 15D (b), and assault by means of a dangerous weapon, in violation of G. L. c. 265, § 15B (b). On this, his direct appeal, he raises a single issue, challenging the denial of a motion made by defense

counsel on the morning of the trial for an evaluation in order to determine the defendant's competency to stand trial. We affirm.

Background. It is long settled that, as a matter of constitutional law, an individual may not be compelled to stand trial when he or she is mentally incompetent. Pate v. Robinson, 383 U.S. 375, 378, 385 (1966). Commonwealth v. Vailes, 360 Mass. 522, 524 (1971). A defendant is incompetent to stand trial if his or her "mental condition is such that he [or she] lacks the capacity to understand the nature and object of the proceedings against him [or her], to consult with counsel, and to assist in preparing his [or her] defense." Commonwealth v. Crowley, 393 Mass. 393, 398 (1984), quoting Drope v. Missouri, 420 U.S. 162, 171 (1975). Where there exists "a substantial question of possible doubt" as to whether the defendant is competent to stand trial, Crowley, supra at 399, quoting Commonwealth v. Hill, 375 Mass. 50, 54 (1978), the judge must conduct a hearing on competency prior to trial, and the defendant may be tried only if the Commonwealth proves the defendant to be competent by a preponderance of the evidence. Crowley, supra at 402.[1]

[1] A defendant also may not be criminally punished if he was found to have had, at the time of commission of the crime, "(1) a 'mental disease or defect' which causes lack of substantial capacity either (2) to appreciate the wrongfulness of [his] acts

In this case, the question is not whether a hearing on competency should have been held, but whether the judge abused his discretion in declining to order a competency evaluation on the morning of trial when requested to do so by defense counsel. Some background is in order.

General Laws c. 123, § 15 (a), provides that "[w]henever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists." That subsection further provides that "[w]henever practicable, examinations shall be conducted at the court house or place of detention where the person is being

---

or (3) conform [his] conduct to the law." Commonwealth v. Mattson, 377 Mass. 638, 643-644 (1979), citing Commonwealth v. McHoul, 352 Mass. 544, 546-548 (1967) (one whose mental condition was such that he could not distinguish between lawful and unlawful conduct or that he could not resist or control impulse that led to commission of crime, cannot be held criminally responsible for voluntarily engaging in unlawful conduct). Once a defendant raises this defense of lack of criminal responsibility, it is the Commonwealth's burden to prove beyond a reasonable doubt that the defendant did not lack either substantial capacity. Commonwealth v. Kostka, 370 Mass. 516, 526, 531 (1976). This case involves no claim concerning the defendant's criminal responsibility at the time of the commission of the crimes with which he was charged or convicted.

held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial." G. L. c. 123, § 15 (a). The court houses of Massachusetts are, as a result of the need for such evaluations, generally equipped to provide criminal defendants access in the court house to professional personnel who perform such evaluations. See Commonwealth v. Johnson, 80 Mass. App. Ct. 505, 513 (2011) ("We start with the recognition that a judge is not a mental health expert. Every court in the Commonwealth has court forensic services available to conduct mental health evaluations. See G. L. c. 123, § 15").

General Laws c. 123, § 15 (b), provides that "[a]fter the examination described in paragraph (a), the court may order that the person be hospitalized at a facility or, if such person is a male and appears to require strict security, at the Bridgewater [S]tate [H]ospital, for a period not to exceed twenty days for observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial . . . for the crime or crimes with which he has been charged."

Approximately one month before trial, on September 3, 2015, the motion judge in this case ordered the defendant to undergo

an evaluation under § 15 (a).[2] The defendant had been irrationally and irrelevantly responding to his attorney and was not making sense at the time. During his § 15 (a) evaluation with court evaluator Dr. Dona Maynard, the defendant began talking in a flat tone making only limited eye contact, repeating that "[t]he Mexican guerillas are going to kill everyone." The defendant then told Dr. Maynard that he was a member of a Mexican drug cartel. Dr. Maynard concluded that the defendant's "bizarre behavior . . . indicates a clear inability to communicate with his attorney and participate in his legal proceedings on any level at this time." Dr. Maynard recommended that the defendant be further evaluated for competency to stand trial. Based on the report from Dr. Maynard, the judge then ordered the defendant to be sent to Bridgewater State Hospital (Bridgewater) under § 15 (b).

On September 21, Bridgewater evaluator Dr. Jeffrey Burl issued a report. The evaluators at Bridgewater concluded that the defendant was competent to stand trial. Although the defendant himself reported a number of mental health diagnoses, the Bridgewater evaluators concluded that he suffered from no

[2] The facts in this and the following paragraph are taken from the report of the evaluators at Bridgewater State Hospital. As described infra, this report was introduced in evidence sua sponte by the trial judge during consideration of the defendant's motion for referral to an independent evaluator.

legally defined mental illness. Dr. Burl concluded that his prior statements that might have been thought to reflect mental illness were, in fact, manipulative, and that he feigned mental illness in order to be sent to Bridgewater rather than back to the Barnstable County house of correction.[3]

On the morning of trial, defense counsel reported to the trial judge that the defendant had simply stopped speaking to him. He said that the defendant's communication was inconsistent: "Sometimes he's communicative; other times, he's not," but that on the morning of trial the defendant was not communicating. He moved for the judge to order the defendant evaluated by an independent evaluator, asserting that "[i]t seems Bridgewater has arrived at their conclusion" about the defendant.

Defense counsel was not sworn and did not place anything in evidence. He represented, however, that the defendant was uncooperative and would not speak, but that he had been communicative before at times. Defense counsel reminded the

[3] According to Dr. Burl's report, the defendant stated that his desire to return to Bridgewater "might have had something to do with" his comments at the court house about the Mexican cartel on September 3, 2015. The defendant later indicated that he had behaved so bizarrely at the court house in order to be sent to Bridgewater where, unlike at the house of correction, he had monetary funds. He hoped to use those funds to contact his sister and have her bring certain paperwork to the court house to help his case.

judge about the defendant's prior statements during his § 15 (a) evaluation about Mexican guerillas, and he represented, and the prosecutor seemed to agree, that the defendant's father had reported the defendant posting on the social media site Facebook things like "ISIS" affiliation. Finally, defense counsel relayed that he had heard secondhand from court officers that at some point while at the house of correction, the defendant had ingested a concoction containing his own waste.

The judge had the defendant brought into the court room. The defendant was uncooperative and had to be carried in by five to six court officers. The judge asked the defendant to look at him, which the defendant declined to do, and asked the defendant whether he understood that he was there for trial, whether he understood that the judge was going to impanel a jury without his being present and that he would not be able to assist his attorney, whether he had anything to say regarding what he had just been told, whether he understood that he had been found competent by the professionals at Bridgewater, and whether he would assist his attorney in his defense or wait downstairs. The defendant did not respond to any of these questions.

The judge sua sponte swore in the court officer who testified that the defendant was behaving noncooperatively that day, but not in his usual manner. The officer testified that he was familiar with the defendant and that he was ordinarily

combative, biting, spitting, and fighting "every step of the way every time we deal with him." That morning, however, the defendant was just noncompliant; he did not fight but instead refused to walk and was "dead weight," such that it took five to six officers to bring him to the court room.

The judge sua sponte entered the September 21 report as an exhibit. Based on the report and the fact that the defendant had been found competent multiple times, a fact apparently within the judge's own knowledge and which the defendant does not contest, the judge found that the defendant was able to pick and choose when he wanted to appear incompetent in order to avoid a trial. Defense counsel renewed his motion for an independent evaluation, and the judge denied the motion.

Discussion. The question before us is not whether the judge should have held a competency hearing, it is only whether he should have taken the lesser step of ordering an evaluation under G. L. c. 123, § 15 (a).[4] The statute provides that the court may order such an evaluation whenever it "doubts whether a defendant in a criminal case is competent to stand trial." G. L. c. 123, § 15 (a).

[4] The defendant asked specifically for an "independent" evaluation. Because we conclude that no evaluation at all was required under the circumstances of this case, we need not and do not address the question when such an evaluation might be warranted.

We have not had occasion before to assess the meaning of this standard to determine when a judge is required to order such an evaluation. As the trial judge noted, and as the Supreme Judicial Court has recently reminded us, "competency may be fluid." Commonwealth v. Jones, 479 Mass. 1, 15 (2018). Although in determining whether to order an evaluation under the statute, a judge may decide to hold a hearing, take testimony, and swear witnesses, we think that, as with the determination of competency itself, the judge may, as he did here, "rely on [his or] her own observations and direct knowledge of events, testimony from court officers and court staff, and the defendant's statements and conduct, as well as the impressions of counsel." Commonwealth v. Scionti, 81 Mass. App. Ct. 266, 272-273 (2012). In making the ultimate determination of competence, judges need not credit an expert's opinion, Commonwealth v. Lameire, 50 Mass. App. Ct. 271, 277 (2000), because competency ultimately is a "legal, not a medical," determination, Jones, supra at 14. Judges, however, are not medical doctors or psychologists and the authority to seek an evaluation when the court has any "doubt[]" about competence, and the placement of clinicians by statute at the disposal of the court, reflect that in many circumstances credible information about odd or unusual behavior will warrant an order for an evaluation under the statute. G. L. c. 123, § 15 (a).

To give just one example, the trial judge in the recently decided Commonwealth v. Jones, supra at 11-12, appropriately ordered a midtrial competency evaluation after "a court officer reported to the judge that, during the lunch break, the defendant had begun apparently interacting with an invisible dog."

It is clear that a defendant's burden to obtain an evaluation under § 15 (a) must be quite low. It must, by definition, be lower than the burden articulated in subsection (b) of the statute, which authorizes further evaluation when there is a "reason to believe" that an examination is "necessary in order to determine whether . . . a person . . . is not competent to stand trial." G. L. c. 123, § 15 (b). And it must be at least as low as the burden required to demonstrate the need to hold a hearing on the legal question of competence, which must be held whenever there is even "'a substantial question of possible doubt' [about] whether the defendant is competent" (citation omitted). Scionti, 81 Mass. App. Ct. at 272.

In this case, however, we need not define the precise point at which odd or unusual conduct would raise sufficient doubt in a reasonable person to require the judge to order such an evaluation. That is because in this case the judge had before him a report from Bridgewater, conducted less than one month

earlier, that concluded that the defendant had no legally defined mental illness, that he was competent to stand trial, and that his apparent psychotic symptoms noted by Dr. Maynard in her September 3 report were feigned in order to avoid court proceedings and a return to the house of correction.

In light of the conclusions of this report, and given all the other information before the trial judge, from counsel, from his own interaction with the defendant, from his own knowledge of the defendant, and from the court officer, we cannot say that it was an abuse of discretion not to order a further evaluation. We need not and do not, however, conclude that it would have been an abuse of discretion to order such an evaluation. See Seng v. Commonwealth, 445 Mass. 536, 541 (2005) ("The fact that the defendant has been examined once does not preclude his being examined again by a different expert"). Indeed, given the importance of ensuring the competence of defendants to stand trial, and the minimal disruption that may be attendant upon such an evaluation in the court house, there doubtless will be circumstances in which it is prudent to err on the side of undertaking an evaluation. On all the facts and circumstances here, though, the trial judge was not required as a matter of law to do so.

Judgments affirmed.