

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-420
 : (C.P.C. No. 09CR-7510)
 Mark A. Miller, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on December 2, 2010

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for
appellee.

James Watson, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Defendant-appellant, Mark A. Miller, appeals from a judgment of the Franklin County Court of Common Pleas finding defendant guilty, pursuant to guilty plea, of one count of theft. Defendant assigns a single error:

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING THE DEFENDANT-APPELLANT A RIGHT TO TRIAL WHEN SERIOUS QUESTIONS WERE PRESENT AS TO DEFENDANT-APPELLANT'S MENTAL COMPETENCY TO RELINQUISH HIS CONSTITUTIONAL RIGHTS AT TRIAL

Because the trial court did not err in finding defendant competent, we affirm.

I. Facts and Procedural History

{¶2} An indictment filed December 16, 2009 charged defendant with one count of theft in violation of R.C. 2913.02, a felony of the fifth degree. The indictment followed an incident on December 7, 2009 in which Columbus police arrested defendant at a Walmart store for concealing over \$500 of merchandise in bags and leaving the store without paying for the items. On December 18, 2009, defendant entered a plea of not guilty. Defendant subsequently filed both a motion to suppress statements he made to police and a motion for a competency evaluation.

{¶3} On February 15, 2010, the trial court ordered a psychological evaluation of defendant. According to a March 10, 2010 letter from Netcare, filed in the court March 12, 2010, defendant had no serious mental illness and is not mentally retarded. The letter, authored by Jayne Speicher-Bocija, Ph.D., Psychologist, further stated defendant was capable of understanding the nature and objective of the proceedings against him and of assisting his counsel in his defense. A complete report accompanied the letter.

{¶4} The trial court considered defendant's competency at a hearing held on March 16, 2010, where both the state and defendant stipulated to the findings in Dr. Speicher-Bocija's report. At that same hearing, defendant indicated a desire to change his not guilty plea to guilty. When asked whether defendant understood what was needed of him at the hearing, defendant responded, "Hell no, I don't understand." (Tr. 6.) Defendant stated he had been trying to get in touch with his attorney by phone but counsel had not provided him with any answers. The trial court then asked defendant whether he wished

to enter a guilty plea, to which defendant replied, "Yes. I want to get this over with," but he advised the court he had "problems comprehending." (Tr. 7.) In the ensuing dialogue, defendant indicated he discussed the charge with his attorney, had no questions about the charge, and was satisfied with his attorney.

{¶5} The trial court asked defendant's attorney whether defendant understood his rights. Defendant's counsel responded that defendant "had been adamant" about "getting this case over with, wanting to plead guilty." (Tr. 14.) Although counsel indicated some "nervousness" about defendant's "comprehension issues," he noted doctors repeatedly had found defendant competent over the past few years, prompting the trial court to read portions of Dr. Speicher-Bocija's report and conclusions about defendant's competence into the record. (Tr. 14, 16-17.) After the prosecution entered the facts into the record, defendant again stated he wanted "to get it over with" and entered his guilty plea. (Tr. 18-19.)

{¶6} At the close of the hearing, the trial court accepted defendant's guilty plea, finding defendant "understands the nature of the charge, the effect of the plea, as well as the maximum penalties that can be imposed." (Tr. 19.) As the trial court explained the sentencing considerations to him, defendant stated that "[t]his is fucked up, man." (Tr. 27.) Although the trial court noted defendant's "disrespect," defendant continued to voice his displeasure with the sentencing. (Tr. 27-28.) The trial court ultimately sentenced defendant to one year in prison with up to three years of optional post-release control. The trial court journalized its decision in a March 19, 2010 judgment entry, noting defendant had 100 days of jail credit. The trial court also filed a March 24, 2010 entry finding defendant competent. Defendant timely appeals.

II. Assignment of Error

{¶7} Defendant's single assignment of error asserts the trial court erred in accepting defendant's guilty plea where serious questions existed regarding defendant's mental competency to enter the plea.

{¶8} In determining whether a defendant is competent to stand trial, the test is " 'whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.' " *State v. Were*, 118 Ohio St.3d 448, 2008-Ohio-2762, ¶45, quoting *State v. Berry* (1995), 72 Ohio St.3d 354, 359, quoting *Dusky v. United States* (1960), 362 U.S. 402, 80 S.Ct. 788. "A defendant is presumed to be competent to stand trial, and the burden is on the defendant to prove by a preponderance of the evidence that he is not competent." *Id.*, citing R.C. 2945.37(G); *State v. Jordan*, 101 Ohio St.3d 216, 2004-Ohio-783, ¶28.

{¶9} An appellate court will not disturb a trial court's finding that a defendant is competent to stand trial absent an abuse of discretion, and no abuse of discretion occurs when some reliable and credible evidence supports the finding. *Id.* at ¶46, citing *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, ¶33; *State v. Williams* (1986), 23 Ohio St.3d 16, 19; *State v. Adams* (1980), 62 Ohio St.2d 151, 157 (stating an abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable").

{¶10} Within those parameters, defendant contends the trial court did not conduct a full hearing on the issue of defendant's competency to enter a guilty plea. He further asserts the record does not support a finding of competency, noting his trial counsel's

concern regarding the "comprehension issues" defendant "seemed to have had" during the hearing. (Tr. 14.) Defendant lastly points to his various outbursts during the hearing, causing the trial court to label his conduct as "ridiculous" and "completely disrespectful." (Tr. 25.)

{¶11} To the extent defendant asserts the trial court did not properly inquire into defendant's competency, his argument lacks merit. Defendant filed a motion for a competency evaluation, and the court ordered defendant's psychological review. After receiving the psychologist's report, the trial court held a hearing on March 16, 2010 for the express purpose of addressing defendant's "psychological evaluation." At the hearing, the trial court noted Dr. Speicher-Bocija concluded "within a reasonable degree of psychological certainty that defendant * * * is not mentally retarded and does not have a serious mental illness" and "is presently capable of understanding the nature and objective of the legal proceedings against him and of assisting counsel in his defense." (Tr. 2.)

{¶12} Although the report accompanying the letter is not in the record, both the state and defendant, through counsel, stipulated to the findings in the report. Because defendant stipulated to the psychologist's determination that defendant was competent and did not request a second opinion, the trial court cannot be said to have erred in relying on Dr. Speicher-Bocija's evaluation to find defendant competent. See, e.g., *State v. Hardley*, 8th Dist. No. 88456, 2007-Ohio-3530, ¶18, citing *State v. O'Neill*, 7th Dist. No. 03 MA 188, 2004-Ohio-6805, ¶21 (holding that "[w]here the parties stipulate to the contents of the competency reports which opine that the defendant is competent, the parties stipulate to competency and waive the competency hearing").

{¶13} Defendant nonetheless notes on appeal that his counsel paused when asked whether defendant understood his rights and waived his rights freely and voluntarily. While counsel expressed "some concerns about [defendant's] functioning levels" during the hearing, counsel nonetheless stated "I do think [defendant] is fulfilling his wishes here knowing what he wants to do." (Tr. 14.) In the end, defense counsel noted defendant had been evaluated multiple times in the recent past, and each time defendant was determined to be competent.

{¶14} Similarly, defendant's erratic or disruptive behavior or outbursts during the hearing do not suggest the trial court erred in concluding defendant was competent. See *Vrabel* at ¶29. "Incompetency must not be equated with mere mental or emotional instability or even with outright insanity. A defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel." *Id.*, quoting *State v. Bock* (1986), 28 Ohio St.3d 108, 110 (internal quotations omitted).

{¶15} In the final analysis, the trial court conducted a hearing on the issue of defendant's competency, abbreviated due to the stipulations of counsel. See *State v. Cumberlander*, 10th Dist. No. 02AP-1294, 2003-Ohio-5948, ¶17 (stating "a defendant who pleads guilty is not entitled to a subsequent competency hearing when the record does not contain a sufficient indicia of incompetence"), citing *State v. Brookins* (Oct. 1, 1998), 8th Dist. No. 73345. Nor did the trial court abuse its discretion in finding defendant competent in light of the psychologist's report and the parties' stipulation to that report. *Vrabel* at ¶33, citing *Williams* at 19 (concluding the trial court's findings will not be

disturbed where some reliable, credible evidence supports those findings). Accordingly, we overrule defendant's single assignment of error.

III. Disposition

{¶16} Having overruled defendant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.
