

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-01-008
- vs -	:	<u>OPINION</u>
	:	6/14/2010
GERALD BULLOCKS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 09CR26050

Rachel A. Hutzal, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Warren Wolter, 9854 Tall Timber Drive, Cincinnati, Ohio 45241, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Gerald Bullocks, appeals from his conviction and sentence in the Warren County Court of Common Pleas for harassment with a bodily substance.

{¶2} Bullocks is a prisoner at the Lebanon Correctional Institution in Warren County, Ohio. In 2009, Bullocks spit on a prison guard and was charged with harassment with a bodily substance, a fifth-degree felony, in violation of R.C. 2921.38(A). Bullocks' trial counsel moved to have Bullocks declared incompetent to

stand trial. Bullocks was examined by a court-appointed psychologist, Dr. Robert Kurzhals, who testified at Bullocks' competency hearing that Bullocks was competent to stand trial. The trial court accepted Dr. Kurzhals' opinion and found Bullocks competent to stand trial. Bullocks then changed his not guilty plea to a no contest plea. The trial court accepted Bullocks' no contest plea, found him guilty as charged, and sentenced him to an additional six months in prison, to be served consecutive to the prison term he was already serving.

{¶3} Bullocks now appeals, assigning the following as error:

{¶4} "THE TRIAL COURT ERRED IN FINDING APPELLANT COMPETENT TO STAND TRIAL AND ENTER A NO CONTEST PLEA."

{¶5} Bullocks argues the trial court erred in finding him competent to stand trial and to plead no contest to the charge of harassment with a bodily substance. We disagree.

{¶6} Due process and fundamental fairness demand that a criminal defendant who is not competent to stand trial not be tried and convicted of an offense. *State v. Murphy*, 173 Ohio App.3d 221, 227, 2007-Ohio-4535, ¶ 28, citing *State v. Braden*, 98 Ohio St.3d 354, 2003-Ohio-1325, ¶114. However, a criminal defendant is presumed to be competent to stand trial, R.C. 2945.37(G), and therefore a defendant who claims he is not has the burden of proving that fact by a preponderance of the evidence. *State v. Stanley* (1997), 121 Ohio App.3d 673, 685, citing *State v. Williams* (1986), 23 Ohio St.3d 16, 19. See, also, *Medina v. California* (1992), 505 U.S. 437, 112 S.Ct. 2572 (a state does not violate due process by presuming a defendant is competent to stand trial and placing the burden on him to prove his incompetence by a preponderance of evidence). If, after holding a competency hearing, the trial court finds by a preponderance of the evidence that, because of the defendant's present mental

condition, he is incapable of understanding the nature and objective of the proceedings against him or of assisting in his own defense, the court must find the defendant incompetent to stand trial. R.C. 2945.37(G).

{¶7} "An appellate court will not disturb a competency determination if there was 'some reliable, credible evidence supporting the trial court's conclusion that [the defendant] understood the nature and objective of the proceedings against him.' *State v. Williams* (1986), 23 Ohio St.3d 16, 19 ***. The adequacy of the 'data relied upon by the expert who examined the [defendant] is a question for the trier of fact.' *Id.*" *State v. Neely*, Madison App. No. CA2002-02-002, 2002-Ohio-7146, ¶10.

{¶8} Bullocks failed to present sufficient evidence to allow the trial court to find, by a preponderance of the evidence, that he was incapable of understanding the nature and objective of the proceedings against him or of assisting in his own defense. Moreover, Dr. Kurzhals' expert testimony provided ample support for the trial court's decision to find Bullocks competent to stand trial.

{¶9} Bullocks argues there was insufficient evidence presented to support the trial court's finding that he was competent to stand trial because Dr. Kurzhals interviewed him for only two hours and fifteen minutes, during which time he failed to conduct "normal" or "standard mental competency tests" on him despite several indications that he did not understand the legal proceedings against him.

{¶10} However, during his testimony, Dr. Kurzhals explained that he decides on a case-by-case basis whether or not to perform standard mental competency tests and that he did not perform any such testing in this case because Bullocks "appeared to have at least borderline, if not higher, abilities." Dr. Kurzhals also explained that he did not do any "malingering" testing on Bullocks "because he wasn't obviously faking any psychiatric or psychotic symptoms at the time." Dr. Kurzhals concluded that Bullocks

was not suffering from the active symptoms of any type of mental illness, was not mentally retarded, and was capable of assisting counsel in his own defense. Bullocks failed to present any evidence to contradict Dr. Kurzhals' testimony.

{¶11} In support of his argument that there was insufficient evidence to support the trial court's finding that he was competent to stand trial, Bullocks cites *State v. Nickell*, Wood App. No. WD-07-015, 2008-Ohio-1571. However, that case is readily distinguishable from this one.

{¶12} In *Nickell*, the court of appeals held there was insufficient evidence to support the trial court's determination that Yvonne Nickell was competent to stand trial, because: (1) the trial court relied solely on the testimony of a psychologist who based his report upon a single interview with Nickell, the report "was less detailed and specific to [Nickell's] mental health history," and the report "stated vague, generalized conclusions[,]" see *id.* at ¶15; and (2) Nickell's responses to questions asked of her during the plea acceptance hearing, which the court of appeals quoted at length, strongly indicated she was seriously confused about the proceedings that were taking place, see *id.* at ¶18-119.

{¶13} In this case, by contrast, Dr. Kurzhals' report was thorough and detailed, and provided specific facts to support his conclusions that Bullocks was capable of understanding the nature of the proceedings against him and of assisting in his own defense. At Bullocks' competency hearing, Dr. Kurzhals, in response to questioning from the trial court, testified that he was "firmly convinced" that Bullocks was competent to stand trial and that his opinion was based upon a "reasonable degree of certainty" in the area of clinical psychology. Afterwards, the trial court made the following findings:

{¶14} "First of all, Dr. Kurzhals is a clinical psychologist licensed to practice in the State of Ohio. His education and experience qualify him to testify in this case and to

render opinions.

{¶15} "Based on his history that was available to him, the examination he preformed [sic], when you apply his education and experience to that, he's able to express an opinion on the ultimate issue and that is Mr. Bullocks' competency.

{¶16} "I accept the opinion from Dr. Kurzhals. I find that Mr. Bullocks is competent to stand trial."

{¶17} At the change of plea/plea acceptance hearing, the trial court informed Bullocks of the effects of his no contest plea and the constitutional and nonconstitutional rights he was waiving by pleading no contest, and determined that Bullocks was making the plea knowingly, intelligently and voluntarily. See Crim.R. (B) and (C). At defense counsel's request, the trial court explained to Bullocks what a no contest plea was, and Bullocks told the trial court that he understood the explanation. There was nothing at the plea acceptance hearing to indicate that Bullocks did not understand the proceedings, or was unable to enter a plea or otherwise assist in his own defense. Cf. *Nickell*, 2008-Ohio-1571, ¶18 – 114. In light of the foregoing, we reject Bullocks' contention that the trial court erred in finding him competent to stand trial or to enter a no contest plea.

{¶18} Accordingly, Bullocks' sole assignment of error is overruled.

{¶19} Judgment affirmed.

YOUNG, P.J., and HENDRICKSON, J., concur.