

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-11,465
	:
	:
vs.	: CRIMINAL DIVISION
	: Competency Determination
BRIAN YASIPOUR, SR.,	:
Defendant	:

OPINION AND ORDER

Before the Court is the Commonwealth's Motion to Determine Competency, filed October 16, 2001. Defendant has been charged with homicide in connection with the killing of his five-year old daughter on August 24, 2001. The issue of Defendant's competency was first raised by defense counsel, who, with the Court's permission and allocation of funds, arranged for Defendant to be examined by a psychiatrist, Dr. Pogos Voskanian, M.D. The Commonwealth thereafter sought permission, which was granted, to have Defendant evaluated by another psychiatrist, Dr. Timothy Michals, M.D. At argument on the motion, held November 1, 2001, the reports of both psychiatrists were submitted to the Court¹ and, upon agreement of counsel, the Court was requested to consider Defendant's responses to questions posed to him by counsel and the Court in various prior proceedings.

The test to be applied in determining whether a particular defendant is legally competent to stand trial is whether he has sufficient ability to consult with his attorneys with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him. Commonwealth v Davis, 330 A.2d 847 (Pa. 1975). Any determination of

¹Counsel stipulated to the qualification of both psychiatrists to render a relevant opinion in this matter.

incompetency must be established by a preponderance of the evidence. 50 Pa. C.S. Section 7402, 7403.

Initially, the Court notes that defense counsel concedes Defendant understands the nature of the proceedings and the charges against him. He argues only that Defendant does not have the ability to assist in his defense with a reasonable degree of rational understanding.

Dr. Voskanian expresses the opinion that Defendant's symptoms are suggestive of anxiety and thought and mood disorders. He indicates that the incident of "last week", Dr. Voskanian's interview taking place only six (6) days after the killing, and defendant's incarceration, in addition to his delusional beliefs, fears, and other psychotic symptoms, "have overwhelmed the defendant's coping mechanisms." Dr. Voskanian indicates that Defendant had considerable difficulty focusing on the interview and that it was difficult at times to redirect him to the topic of the interview. He found it necessary to repeat questions and perceived that Defendant had considerable difficulty listening to him and discussing his case. He concluded that Defendant is not able to initiate and maintain a "collaborative relationship" with his attorney at the present time. He found that Defendant expresses a great deal of mistrust toward attorneys in general. In his professional opinion, Defendant is incompetent to stand trial at this time.

Dr. Michals, on the other hand, while agreeing with Dr. Voskanian that Defendant evidences an adjustment disorder with depressed and anxious mood, occurring as a result of his incarceration, and while finding evidence of a Mixed Personality Disorder With Paranoid and Narcissistic Traits, expresses the professional opinion that Defendant is competent to stand trial. He found Defendant able to concentrate and respond directly to most of the questions that were asked of him with timely and relevant answers. He noted that while at times Defendant made comments rather than answer the question, Defendant was able to be refocused and thereafter responded with timely and appropriate answers. Dr. Michals found Defendant's affect to vary appropriately. He noted that Defendant was able to provide a generally organized history, that his thinking is goal-directed and that there were no abnormalities in the process of his thinking. Like Dr. Voskanian, Dr. Michals notes Defendant's pattern of not trusting and accepting the advice of his counsel (referring to previous custody proceedings), and indicates that such behavior is reflective of his underlying paranoia and narcissistic

personality traits and thus it is likely that he will continue to experience conflicts in his relationship with his attorneys. While he finds this to be “problematic”, in his opinion Defendant has the sufficient mental capacity to assist his counsel in this matter.²

Defense counsel argues that based on Defendant’s long history of mental health issues, including paranoia, he fears that if defense counsel attempts to confront Defendant with any evidence against him offered by the Commonwealth, Defendant would “turn-off” to defense counsel and thereafter be unable to assist in his defense. Defense counsel fails to present any evidence of current difficulties with Defendant, however. Dr. Michals recognized the possibility for difficulty in the attorney/client relationship in this case, but nevertheless found Defendant competent to assist his counsel.

The Court’s own experience with Defendant indicates as well that while representation may be difficult, Defendant is nevertheless able to sufficiently assist defense counsel. For example, consider the following exchanges during argument on the recusal motion, heard August 30, 2001:

The Court: As far as his first wife, Ms. Keller is concerned, how long ago was that?

Mr. Rymsza: Ten years ago, eleven years ago.

The Defendant: I think 19--1989 you were at Domestic Relations and you were getting at me real loud.

The Court: Was I a Master at that time?

The Defendant: No, you were—you were representing her and you were yelling really hard at her the whole court could hear you, and I remember that day very well that you were yelling Mr. Yasipour pay your child support, you have recent inheritance.

²Dr. Michals interviewed Defendant on September 29, 2001, thirty-six (36) days after the killing, whereas Dr. Voskianian’s interview took place on August 30, 2001, only six (6) days thereafter. While neither psychiatrist mentioned the timing of the interviews, the Court takes note of it.

The Court: There is several things I did not look at now that he mentions this, Mr. Rymsza. The first would be that I was, in 1989 solicitor for the Domestic Relations Office, and in that capacity I probably dealt with a number of persons as the solicitor for the Domestic Relations Office and therefore I could have been, perhaps, representing her through the contact with the Domestic Relations Office since they often times would give me difficult cases. I'm not sure that I looked under the name Keller, I did look under the name, did she take your name, Yasipour at that time?

The Defendant: No, she was Keller.

...

The Court: Do you have any—does he have any correspondence from me, Mr. Rymsza?

The Defendant: From that time?

The Court: Yes.

The Defendant: No.

The Court: There's no correspondence?

The Defendant: No, I just have a correspondence from you three or four months ago.

The Court: I understand you have correspondence from me as a Judge.

The Defendant: Yeah, for recuse yourself.

N.T., August 30, 2001 at 17-18, 19. Defendant's responses were relevant and contained detailed information. His memory appears intact, at least with respect to the issues raised at that time. Defendant was aware of the issue, was able to address it and was, in fact, assisting counsel in the presentation of information relevant to that issue. Other experiences with Defendant have led the Court to find him difficult, but have never raised in the Court's mind a question of his competence to participate in the proceeding at hand.

Considering the opinion of Dr. Michals, this Court's own experiences with Defendant, and

the speculative nature of defense counsel's argument, the Court finds that, while defense counsel's job in this particular instance may become rather difficult, the Court cannot at this time conclude that such will become sufficiently impossible. The Court therefore finds Defendant competent to stand trial at this time.

ORDER

AND NOW, this 6th day of November, 2001, for the foregoing reasons, the Court finds Defendant competent to stand trial at this time. The District Magistrate is directed to reschedule the preliminary hearing.

By the Court,

Dudley N. Anderson, Judge

cc: DA
PD
D.J. Carn
Gary Weber, Esq.
Hon. Dudley N. Anderson