

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CR-14-449

STATE OF MAINE

v.

**ORDER ON DEFENDANT'S COMPETENCE
TO STAND TRIAL**

LEROY SMITH III

Background

Leroy Smith III stands accused of intentionally or knowingly, or with depraved indifference, causing the death of his father in Gardiner, Maine on May 3, 2014. Mr. Smith has been represented throughout these proceedings by Attorneys Pam Ames and Scott Hess, and the State is represented by Assistant Attorney General Don Macomber. The issue of Mr. Smith's competence to stand trial has been pending since shortly after his arrest on this charge, May 5, 2014. This matter was originally assigned to Justice Donald Marden but was reassigned to the undersigned Justice on December 15, 2016.

Justice Marden has issued multiple orders in this case. In May of 2014, Justice Marden ordered that Mr. Smith be evaluated for competence. After Dr. Ann LeBlanc, head of the State Forensic service, found on May 13, 2014 that Mr. Smith lacked the skills required for competence, Justice Marden on June 23, 2014 ordered that he be transferred to Riverview Psychiatric Facility for treatment and evaluation where he has

remained since that date. Dr. Robert Riley on August 15, 2014 conducted a neuropsychological evaluation of Mr. Smith and concluded that Mr. Smith functioned in the high average range of overall intellectual ability, and that he showed no signs of head trauma or other cognitive impairments. Dr. Leblanc evaluated him again in October of 2014 and concluded that as of that date Mr. Smith was still floridly delusional. She saw him again in December of 2014 and found his condition unchanged.

Justice Marden on January 5, 2015 issued an order finding Mr. Smith incompetent to stand trial and ordered that he remain at Riverview for restoration of competence, and ordered periodic evaluations of Mr. Smith pursuant to 15 M.R.S. §101-D. Pursuant to that order, Dr. Leblanc evaluated him again and opined in her March 5, 2015 report that Mr. Smith remained incompetent. She stated, however, that competence might be restored if he received medication. Mr. Smith, however, refused to take medication as prescribed by Riverview staff and also refused to be evaluated by Dr. Peter Donnelly.

In June of 2015 the State filed a motion pursuant to 15 M.R.S. §106(3) for the Court to order that Mr. Smith be involuntarily medicated in order to restore competence. In August of 2015, Dr. Donnelly issued a report that agreed with Dr. Leblanc that medication therapy was likely to improve Mr. Smith's condition. On December 2, 2015 Justice Marden conducted a testimonial hearing on the State's motion for involuntary medication. On January 4, 2016 Justice Marden granted the motion, and additionally ordered that the State Forensic Service conduct monthly evaluations and issue reports on Mr. Smith's condition, as well as ordering Riverview to provide updates on Mr. Smith's condition.

Findings and Conclusions

The Court has reviewed all of the prior orders issued by Justice Marden, the available transcripts of hearings, as well as all of the evaluations including the monthly and weekly updates provided by the State Forensic Service and Riverview.¹ In addition, after taking this case over from Justice Marden, the Court conducted testimonial hearings on January 20, 2017 and February 14, 2017. The Defense was asking the Court to find that Mr. Smith was still not competent to stand trial, and to dismiss the charges against him. The State was asking that the Court find that competence had been restored, and for an order extending Justice Marden's order for involuntary medication. At the January 20, 2017 hearing Dr. Leblanc testified along with Dr. Donnelly, Dr. Douglas, and Miriam Davidson who is a Psychiatric Nurse Practitioner. The Defendant's examiner, Dr. Carlyse Voss was not available on that date but he testified on February 14, 2017.

Dr. LeBlanc testified that Mr. Smith's condition had significantly improved since Riverview began medication therapy pursuant to Justice Marden's orders. In addition, she noted that his understanding of the legal system and process had always been "excellent." According to Dr. Leblanc, Mr. Smith has a clear understanding of the role of legal actors, including what it means to plead not criminally responsible and what an indeterminate commitment would mean to his liberty. Remarkably, he also understood what it meant to have a bifurcated trial after entry of a plea of not criminally responsible. She testified that

¹ The Court has not reviewed the most recent report filed by Dr. Douglass on or about April 3, 2017 but ordered that it be sent to counsel of record. The Court did not think it should consider the report, as the record on the competence hearing has been closed by agreement of the parties. Justice Marden's order contemplates further evaluations and this order will address that issue and modify that order.

he seemed reluctant to enter an NCR plea in part because of the experience of another patient.

As of the date of that hearing, Dr. Leblanc testified that he was still not willing to meet with his attorneys -- which had obviously been a source of some frustration and concern on their part. However, Dr. Leblanc testified that Mr. Smith had recently begun to be able "step back" when talking to examiners about the case and his otherwise steadfast delusions about why he killed his father. What was new, she said, was his ability to speak about his case and his attorneys separate from the delusions he still maintained. She said he remained "unrealistic" about what his attorneys could do to investigate his claims, and that he did not trust them. At the same time, she said he was able to see his attorneys as essential to his case. What she described was not a situation where he was unable to communicate with them but more a situation of his not being willing to communicate with them. Nevertheless she described his motivation to cooperate and get through the process as "very high." He wanted, she stated, to be found competent, to proceed to trial, and he wanted his beliefs heard about why he felt he had to kill his father. She said he also understood he risked conviction if his explanation or defense was not believed by a jury or judge. In response to questions from the Court about persons who suffer from a delusional disorders, and whether they can ever be competent if they continue to hold delusions about their motivations to engage in certain criminal conduct, she stated that it was possible for a person with a delusional disorder to be competent to stand trial. The goal would be to have the patient motivated to look at the consequences of certain decisions and figure out what is in their best interest. In Mr. Smith's case, she indicated that he made it very clear that he understood that if his

defense or defenses were rejected by the trier of fact, he would want to then ask that he be found not criminally responsible.

Dr. Donnelly testified that Mr. Smith has always possessed an “excellent understanding” of the legal process, the consequences of certain decisions he might make, and that he has “always understood the players.” The issue, he stated, has always been his ability to assist in his defense. Dr. Donnelly also noted areas of improvement in Mr. Smith’s understanding that there was limited evidence that his father was trying to poison him, and described the “impasse” that existed between himself and his attorneys. He had developed, however, an ability to “compartmentalize” his delusions, an ability which had been lacking previously. He stated that Mr. Smith had the ability to make it through a trial in terms of maintaining his composure, along with the ability to let others know when he had reached a point where he needed to take “a break.” He concluded that Mr. Smith had developed the ability to understand why a jury might think his delusions were “crazy” and that if the jury rejected his defense he would accept the possibility that perhaps the delusions were not real. When asked now if he is sure his delusions are real Mr. Smith’s answer now was, “I just don’t know.”

Dr. Douglass testified that he had seen Mr. Smith twice, most recently on January 12, 2017. He testified that he was able to talk about his day-to-day life in an appropriate way. With respect to his legal situation he continued to reference his delusions but he could talk about his legal situation in a reality-based way. He stated he agreed with Drs. Leblanc and Donnelly about his ability to make it through a trial with breaks and medication, but that he continued to mistrust his attorneys. When asked if he might be receptive to working with new counsel he stated that Mr. Smith might be able to work

better with different counsel. Dr. Douglass stated that his sense was that he felt his attorneys had “dismissed” his beliefs about why he killed his father and that this was the source of his mistrust of them. He agreed with the other examiners that despite his attorneys efforts to have him found not competent, that Mr. Smith very much wanted to be found competent by the Court.

Miriam Davidson testified that Mr. Smith had made significant progress since Justice Marden issued the involuntary medication order. She described him as being open to others, is perceived by others as a leader, and noted that he had been elected President of his unit. She testified that the hospital had started Mr. Smith on Zyprexa which caused a lot of side effects, the worst of which was significant weight gain. However, after changing his medication to Haldol, and finding the “right amount” of that medication, he began to lose most of the weight. She described him as being much more awake, and he was able to exercise and participate in yoga and in an “IST” group. She described him as having a “very high level of functioning” with a good ability to handle conflict and to stay calm. Ms. Davidson testified that while he continued to have delusions, that he was able to “draw them in” which meant that one had to “press him” to talk about the delusions. She did state that while he was taking the medication orally for months without complaint, that she was not sure he would do so if the order was lifted. Overall, she described him as “motivated to move forward.”

Shortly after the January 20, 2017 hearing Ms. Davidson contacted Mr. Smith’s defense counsel to tell them that Mr. Smith was willing to meet with them. A meeting was set up, and by all reports Mr. Smith has been cooperating with his counsel since then.

On February 14, 2017 Dr. Carlysle Voss testified that while he agreed with the other examiners about Mr. Smith's understanding of the legal process and its players, his fixed delusions precluded him from assisting counsel in his defense. He had noted in his report that as of the time of his evaluation of Mr. Smith he was refusing to meet with his attorneys. He testified that had just learned that had recently changed. As to whether it was "rational" for Mr. Smith to undergo a bifurcated trial at which he first asserted his "delusional" defense of self defense, with the understanding that if that failed he would be able to argue that he was not criminally responsible, Dr. Voss declined to opine, suggesting that was a legal decision and not a psychiatric one.

After Dr. Voss testified, Defense Counsel informed the Court that Mr. Smith wanted to testify. After conference with the Court, the Defense and State agreed to participate in a judicial settlement conference with a different Justice at which Mr. Smith would be able to explain his defense and obtain feedback from another Justice about his legal options.

On February 18, 2017 the parties participated in a settlement conference with Justice Anderson after which the parties agreed that the undersigned Justice could review Mr. Smith's unsworn testimony before Justice Anderson and accept it in lieu of reconvening the competence hearing to take Mr. Smith's testimony. After another conference with counsel at which the parties agreed the record for the competence hearing would be closed, the Court gave the State time to file a written argument and the Defense time to respond. The last of the written arguments were filed on April 3, 2017.

After consideration of the arguments, a review of the testimony from prior hearings and in January and February of 2017, as well as all evaluations submitted prior

to April 3, 2017, the Court concludes that the State has proven by a preponderance of evidence Mr. Smith now possesses the skills necessary to assist in his defense.

The Law Court has held that the standard for competence is whether “the accused is capable of understanding the nature and object of the charges and proceedings against him... and of conducting in cooperation with his counsel his defense in rational and reasonable manner.” *State v. Jeskey*, 2016 ME 134, ¶50. The Law Court has also noted in that “a defendant may be mentally competent to stand trial even though he or she may require psychiatric treatment.” *Thursby v. State*, 223 A.2d 61, 68.

The defense has essentially made two arguments on the issue of competence since this matter was assigned to the undersigned. First, they have argued that Mr. Smith is not competent because he could not (or would not) work with his counsel. That issue is now resolved, as after many months of treatment the Defendant has begun to work productively with his attorneys since late January.

The second argument is that the Defendant is not competent because he continues to assert a defense – of self defense – which is grounded in a delusion that his father was poisoning him and that he had no choice but to kill him.² The argument is that this delusion prevents him from conducting, in cooperation with counsel, a rational defense. The Court disagrees. As the State points out and as the Law Court has noted, “The fundamental concern in a competence inquiry...is ‘with the mental capacity of the accused as it relates to the criminal adjudication process.’” *State v. Vane*, 322 A. 2d 58, 62 (Me. 1974). The focus is not, as the Defense claims, on whether or not a criminal

² As the Court understands Mr. Smith’s evolution in thinking about why he killed his father, at various times he has reported to multiple examiners that the Hell’s Angels and other motorcycle gangs, along with the band Slayer, played some role in his decision take his father’s life. All examiners who testified gave various versions of these delusions and most noted that the delusions had evolved over time. They all agree that he suffers from a delusional disorder that had culminated into a psychosis at the time of the killing.

defendant had irrational thoughts during the commission of the offense, and holds onto some or all of those delusions after the event . The Court could envision a case involving a defendant with a delusional disorder which is so acute that it prevents him or her from cooperating with defense counsel to form a coherent and rational defense strategy. Mr. Smith is not that defendant. On the contrary, Mr. Smith has been able, with the assistance of his counsel, to formulate alternative legal strategies which he clearly understands. He can articulate the order in which his counsel will proceed to make certain arguments, and understands what will happen if those arguments fail to carry the day.

This strategy has to be understood in terms of his appreciation of the risks that attend each stage of the strategy. The ability to appreciate the risk of pursuing a particular legal strategy, and the ability to rationally make defense decisions which factor in those risks, are core skills that are essential to competence. He now possesses those abilities -- in addition to his relatively sophisticated understanding of the legal process and the actors within it, his ability to work with his attorneys, and his ability to make it through the rigors of court proceedings, albeit with some accommodations. Finally, he now has the ability to understand and articulate the risks presented at every stage of the criminal process and to make decisions that would appear to be in his best interests.

With respect to the order which now permits involuntary medication of Mr. Smith, there is an unresolved issue in Maine law as to whether the Court has the authority to maintain such an order once competence has been restored. As the parties know, however, competence can come and go for a person, like Mr. Smith, who the parties agree suffers from a serious mental illness. The Court will therefore order that Mr. Smith remain committed to Riverview for treatment and observation pursuant to 15 M.R.S. 101-

D(4). Further, Riverview and the State Forensic Service are ordered to continue to provide reports to the Court as to whether there has been any change in Mr. Smith's competence and/or whether he continues to voluntarily take medication as prescribed by Ms. Davidson.

The entry will be: The State has proven by a preponderance of evidence that Mr. Smith is now competent to stand trial. The State Forensic Service is ordered to provide updated evaluations on his competence every 30 days until trial, beginning 30 days from the date of this order, and shall make an examiner available to evaluate Mr. Smith during the trial process. Riverview shall continue to provide reports on Mr. Smith's mental condition to the Court every two weeks beginning May 12, 2017 until trial. Mr. Smith shall remain in the custody of the Commissioner of the Department of Health and Human Services for treatment and observation to maintain his competence.

5/1/17

DATE

Michael J.

SUPERIOR COURT JUSTICE