

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

BRANDON CASTIGLIONE

Docket No.: 218-2019-CR-1132

ORDER ON DEFENDANT'S COMPETENCY

On December 2, 2019, a Motion to Determine Defendant Brandon Castiglione's Competency was filed by defense counsel (see doc. 16) resulting in an order from the Court that an evaluation of Defendant's competency be completed. See Doc. 28. A Competency Evaluation Report was submitted to the Court on April 24, 2020 by Richelle M. Barb, PsyD., Forensic Examiner of the New Hampshire Office of the Forensic Examiner ("OFE"). See Doc. 60 and Exhibit 1. On July 16 and 27, 2020, the Court held a hearing where it received testimony from Dr. Barb and exhibits on the issue. See Exhibits 1-3; A-C. Based upon the Motion, applicable law, competency evaluation report, and evidence received during the hearing, the Court finds the State has proved by a preponderance of the evidence that Defendant is currently competent to stand trial. The Court makes its finding consistent with the standard set forth in State v. Kincaid, 158 NH 90 (2008), quoting the United States Supreme Court in Dusky v. United States, 362 US 402, 402 (1960) in that the Defendant must have a sufficient present ability to consult with and assist his lawyer with a reasonable degree of rational understanding and must have a factual as well as rational understanding of the proceedings against him.

The Court finds Dr. Barb to be a credible witness and an expert in forensic psychology. Dr. Barb explained she reviewed police reports/videos from Defendant's

current arrest as well at least eight other police investigations. She listened to telephone calls between Defendant and others and she also read Defendant's medical and mental health records from 2013 through 2020. Finally Dr. Barb met with Defendant on two occasions, for approximately one hour each time, on January 8 and March 6, 2020.

Dr. Barb explained due to Defendant's refusal to complete the normal evaluation process she was unable to conduct certain tests, which she often relies upon in reaching her conclusion on the issue of competency. Notwithstanding the lack of testing, Dr. Barb found Defendant to be logical, clear, respectful, and able to stay on topic on both occasions when they met. During their meetings she did not find any evidence of paranoia, or that Defendant was hearing voices or was otherwise distracted. He was able to discuss his previous cases and how he learned and understood the legal process. Of note was Defendant's behavior at the first meeting on January 8, 2020. After Dr. Barb had reviewed Defendant's background to include his medical, mental health and prior criminal history, she began to explore his current mental health symptoms by asking him if he hears voices. He replied no. Dr. Barb then asked Defendant if he hears the voice of God. At this point, Defendant stopped responding and simply looked down at the table at which he was seated. He would not respond to any prompting by Dr. Barb or his counsel. After a while he was returned to the House of Correction. Dr. Barb explained that she was uncertain of the cause for this behavior. After the meeting, Defendant explained his behavior in a telephone call to a close friend, Kayla, the mother of his child. Laughing, he told her in detail what he did, consistent with Dr. Barb's observations. He shared with his friend that he simply did not want to continue with the meeting because he was concerned that what he said would be shared with the judge and prosecutor. Dr. Barb determined Defendant had acted with volition and not as a result of mental illness. She further found his reasons

to be rational. She found Defendant's explanation for ending their second meeting also to have a rational basis – that is – he felt it was not in his best interest to continue with his participation. Further, in other telephone calls with Kayla and Defendant's father, Defendant showed a clear, factual, and rational understanding of the disciplinary process at the house of correction. His comments also showed his ability to advocate for himself in that process. In other calls, he showed an awareness of his current criminal charges and advocated for himself.

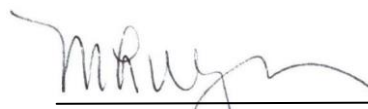
Dr. Barb found Defendant has the ability to consult with and assist his attorneys in his defense with a reasonable degree of rational understanding and that he has a factual as well as rational understanding of the proceedings against him.

During the competency hearing, defense counsel directed Dr. Barb to Defendant's mental health records prior to his current arrest, which showed evidence of possible mental health illness or distress. The Court finds, while relevant to the overall picture of Defendant's life, they do not support a conclusion of current mental health illness/distress. Defense counsel also focused on Defendant's discussions with police and others about his religious beliefs. The fact that Defendant may have strong religious beliefs, without more, is not evidence Defendant suffers from mental illness or is incompetent to stand trial.

Finally, Defendant addressed the Court during the competency hearings. He was logical, clear, respectful and rational in his conversations. His physical presentation during both hearings was as well appropriate.

So ordered.

August 12, 2020
Date



Marguerite L. Wageling
Presiding Justice