

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM COUNTY

SUPERIOR COURT

State of New Hampshire

v.

Brandon M. Castiglione

Docket No. 218-2019-CR-01132

ORDER ON RENEWED MOTION FOR COMPETENCY EVALUATION

Defendant Brandon M. Castiglione stands charged with knowing and reckless second degree murder. Docs. 94, 95 (Indictments). On May 3, 2023, Defendant filed a renewed motion for a competency evaluation. Doc. 197; see also Doc. 195 (accompanying *ex parte* supplement). The Court held a hearing on the matter on May 4, 2023, at which the State orally objected. Following that hearing, the Court requested and received a copy of Defendant's medical and mental health records from the House of Corrections, which the Court has reviewed *in camera*. Jury selection is currently scheduled for May 8, 2023. For the following reasons, Defendant's renewed motion is **DENIED**.

Defendant has raised the issue of competency several times throughout the pendency of this case. See, e.g., Doc. 16 (Dec. 2, 2019 Mot. Determine Competency); Doc. 181 (Mar. 1, 2023 Mot. Determine Competency). On August 12, 2020, the Court (Wageling, J.) found the State had met its burden of proving Defendant was competent based on a detailed report from the Office of the Forensic Examiner ("OFE"). See Doc. 82 (Order on Competency) (citing Doc. 60 (OFE Report)). Notably, Defendant refused

to fully cooperate and participate in the OFE's two evaluation sessions. See Doc. 82 at 2. Subsequently, each time Defendant renewed the issue of competency, the Court found there were insufficient new facts to warrant further review given that the issues raised remained the same and there was no indication Defendant would meaningfully participate in another evaluation. See, e.g., Doc. 181 (Def.'s Mot. Competency Evaluation) (Mar. 1, 2023 Margin Order).

In Defendant's latest motion on competency, defense counsel asserts that during a meeting on May 3, 2023, they observed his "demeanor was markedly different than it has been in previous meetings." See Doc. 197 ¶ 2. According to counsel, Defendant informed them he was "in a state of 'fog or stupor,'" and that "he is having difficulty thinking and is not able to think the way he usually can." See Doc. 195 at 1. During this meeting, and apparently for the first time, Defendant asked counsel if he could be evaluated for competency and indicated a willingness to participate in said evaluation. See id.

When the issue of competency is raised, the trial court "may" order a pre-trial competency evaluation "as the circumstances of the case may require." See RSA 135:17, I(a). "Undoubtedly, the state constitutional right to due process protects defendants from standing trial if they are legally incompetent." State v. Veale, 158 N.H. 632, 637 (2009). However, a defendant does not have an absolute right to a second pretrial psychiatric examination to supplement the findings of the first examiner. See State v. Osborne, 119 N.H. 427, 432 (1979). Trial courts should hold a competency hearing, even if the defendant does not request it, "whenever evidence raises a sufficient doubt as to the competence of the accused." See United States v. Maryea,

704 F.3d 55, 69 (1st Cir. 2013) (quotations omitted). When the trial court has already found a defendant competent, “a significant change in circumstances . . . may render a second competency hearing proper.” See id. at 69–70 (upholding trial court’s determination that defendant sustaining injuries in car accident was not a “significant change in circumstances”).

Upon review of Defendant’s pleadings and his mental health records from the House of Corrections – provided on an expedited basis given that trial commences in two days, the Court concludes that a second competency evaluation is not warranted here. The Court does not find the current complaints credible, particularly in light of his most recent interactions with the HOC mental health staff. While defense counsel has noted a change in Defendant’s demeanor and a newfound willingness to participate in an evaluation, these changes are not enough to raise “a sufficient doubt” as to Defendant’s competency, and do not constitute “a significant change in circumstances” such that a second evaluation is necessary. See Yeboah-Sefah v. Ficco, 556 F.3d 53, 83 (1st Cir. 2009) (finding no error in trial court’s failure to hold second competency hearing due to absence of evidence casting doubt on earlier competence determination). Review of Defendant’s records reveals no evidence supporting a conclusion that he has decompensated to the point he is unable to make basic decisions or assist in his defense. In fact, they lead to the opposite conclusions

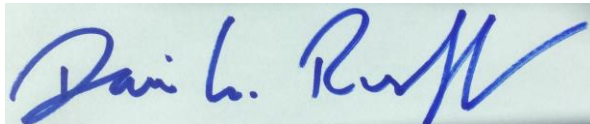
In addition, when Defendant addressed the Court at the most recent hearing, the Court found him to be respectful and articulate, as has been the case in prior hearings. Further, Defendant demonstrated comprehension of the legal proceedings against him, consulting with his attorneys at various points during the hearing and responding

appropriately to the Court's questions. These are also consistent with his most recent treatment records (as recent as 4-27-23) Accordingly, while Defendant may understandably be experiencing increased stress or a change in attitude on the eve of trial – his records reveal he has been having trouble sleeping, the Court finds that a further competency evaluation is not warranted here.

Consistent with the foregoing, Defendant's renewed motion for a competency evaluation is **DENIED**. See Doc. 197. The case shall proceed to trial as planned.
SO ORDERED.

The records produced shall be conveyed to the defendant's counsel. The State may request copies in the event this issue is raised on appeal or if disclosure becomes necessary if competency is raised during the course of the trial.

Date: May 5, 2023



Hon. David W. Ruoff
Rockingham County Superior Court

Clerk's Notice of Decision
Document Sent to Parties
on 05/05/2023