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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001176-MR

ROBERT TURPIN — APPELLANT

v.

APPEAL FROM ESTILL CIRCUIT COURT
HONORABLE THOMAS P. JONES, JUDGE
ACTION NO. 06-CR-00004

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT AND TAYLOR, JUDGES; HENRY,[1] SENIOR JUDGE.

HENRY, SENIOR JUDGE: Robert Turpin appeals from a judgment of the Estill Circuit Court finding him guilty of second-degree assault and sentencing him to five years' imprisonment. He contends that the trial court erred by failing to have

[1] Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

his competency to stand trial evaluated and by failing to hold a competency hearing. After our review, we affirm.

On June 16, 2006, a car in which Turpin was a passenger struck a vehicle that was being driven by Melia McQueen. Turpin's car was traveling on Wisemantown Road in Estill County as McQueen pulled out of her driveway, and the two cars collided. The collision caught the attention of McQueen's neighbors, several of whom came to the scene of the accident. One of McQueen's neighbors, Jim Galloway, approached McQueen and asked if she would like him to call her husband, to which she responded, "Yes." He then went back to his home and called McQueen's husband. At this point, Turpin approached McQueen's vehicle and screamed at her that she should have stopped and looked before pulling out. Witnesses reported that Turpin was "very agitated" and used "terrible, abusive language" towards McQueen.

When Galloway returned to the scene, Turpin confronted him and asked if he was related to McQueen. Galloway noticed that Turpin had something folded in his hand. Turpin then began swinging at Galloway and hit him in the chest. Galloway pushed Turpin away and then realized that he was holding a knife. Turpin swung again and stabbed Galloway in his left side. Turpin ultimately stabbed Galloway twice in the chest and twice in the side. Turpin then threatened to go get a gun, and Galloway returned to his home to call 911 and report the incident.

Estill County Deputy Sheriff Terry Carroll was subsequently dispatched to the scene. While in route, dispatch informed him that someone on the scene had a knife and was trying to stab someone. By the time Deputy Carroll arrived at the scene, Galloway had stopped bleeding. Though he was sore from his wounds, Galloway did not seek medical treatment. When Deputy Carroll asked who had a knife, Turpin responded, "By God, I did it!" and threw everything in his pocket – including the knife – at Deputy Carroll's feet. Deputy Carroll indicated that Turpin remained irate, loud, and disorderly – "like he was out of control" – and refused to cooperate with him.

Turpin was subsequently arrested and charged with second-degree assault, a Class C felony pursuant to KRS 508.020. At his arraignment on March 9, 2006, the trial court appointed Hon. Rebecca Lytle from the Department of Public Advocacy (DPA) to represent Turpin. However, on March 23, 2007, Lytle – with Turpin present – moved to withdraw as Turpin's counsel. According to Lytle, Turpin had expressed a desire to hire a private attorney and had refused to cooperate with her in preparing a defense. In particular, he had refused to sign release forms that would allow Lytle to obtain his mental health records because he did not understand why she wanted records from as far back as 1967. At one point during the hearing, Lytle can be heard telling Turpin not to threaten her. The trial judge admonished Turpin to step away from Lytle and asked him if he was threatening her. Lytle responded that Turpin had offended her by telling her that he wanted a "real lawyer," but "now he's asking me not to be mean to him. He

doesn't want to go back in the room. I don't know what all this means, Judge." Lytle also believed that Turpin was a property owner and therefore financially ineligible for DPA representation. The trial court granted Lytle's motion to withdraw and allowed Turpin 30 days in which to hire new counsel.

On April 27, 2007, Turpin's son appeared in open court with Turpin and advised the trial court that he had spoken to Lytle and that she was possibly willing to take Turpin back as a client. However, since Lytle was not there to affirm this the court passed the case to May 25, 2007. At the May hearing, Lytle stated that she would consider representing Turpin again – even though she had yet to speak to him – but would prefer it if conflict counsel were appointed. She further noted that she was considering an imperfect self-defense claim or an "extreme emotional disturbance" (EED) defense given Turpin's behavior; however, there had been a breakdown in communications and he had only called her once.

Turpin subsequently protested that he had called Lytle many times but that when he called her he always "got a letter from Ms. Baker" afterwards and that the only way he knew when to come to court was her "business card." When the trial court asked Lytle if conflict counsel should be appointed, she responded, "Actually, Judge, it's starting to look like a competency issue now, because [saying that] when he would call me, Ms. Baker would send him a letter, makes no sense, sir." However, the competency issue was not discussed any further, and the trial court ordered the DPA to appoint conflict counsel to represent Turpin. The trial

judge also admonished Turpin not to "go off" on his next attorney, noting that Turpin was "jumping pretty good" at prior hearings. Turpin then told the trial judge that he was suffering from "baked brain syndrome" and that he was going to consult the ACLU. On July 27, 2007, Hon. Charles Kilgore was appointed to handle Turpin's case.

Turpin was tried and convicted of second-degree assault on May 12, 2008. The defense presented no testimony or other evidence but argued that Turpin's behavior indicated a clear-cut case of EED. During the sentencing phase of trial, defense counsel told the jury that Turpin suffered from severe anxiety, bipolar disorder, schizophrenia, post-traumatic stress syndrome, and severe panic attacks – for which he was prescribed a number of medications. The jury recommended the minimum punishment of five years' imprisonment, and the case was set for sentencing on June 13, 2008.

At the sentencing, Turpin's daughter, Rebecca Richardson, a registered nurse, told the trial court that her father was confused and disoriented on the day of the assault. She explained that he had been diagnosed with diabetes shortly after the incident and that uncontrolled blood sugar can cause people to act as if they were drunk. Richardson further indicated that Turpin was "not mentally incompetent" and that he was reluctant to release his medical records because he found such things embarrassing. She also expressed her belief that her father's mental state had been negatively affected by being forced to remain too long in the back of a hot police cruiser following his arrest. The trial court also received

supporting statements from other members of Turpin's family but still decided to sentence him in accordance with the jury's recommendation. This appeal followed.

On appeal, Turpin argues that his statutory and constitutional rights were violated because the trial court failed to have his competency to stand trial evaluated and to hold a competency hearing even though it was presented with sufficient evidence to bring his competency into issue. Turpin relies upon KRS 504.100, which provides:

> (1) If upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court shall appoint at least one psychologist or psychiatrist to examine, treat, and report on the defendant's mental condition.
> (2) The report of the psychologist or psychiatrist shall state whether or not he finds the defendant incompetent to stand trial. If he finds the defendant is incompetent, the report shall state:
>
> > (a) Whether there is a substantial probability of his attaining competency in the foreseeable future; and
> >
> > (b) What type treatment and what type treatment facility the examiner recommends.
> >
> > (3) After the filing of a report (or reports), the court shall hold a hearing to determine whether or not the defendant is competent to stand trial.

Turpin's trial counsel failed to request a competency hearing below; however, the requirements of KRS 504.100 are mandatory and cannot be waived by a defendant.

Mills v. Commonwealth, 996 S.W.2d 473, 486 (Ky. 1999). Therefore, this issue is ripe for consideration.

Turpin directs this Court to a number of facts that he believes required the trial court to hold a hearing concerning his competency. First, the public defender appointed to represent Turpin at trial stated that Turpin refused to aid her in his defense. He would not communicate with her nor would he provide her with medical records. She asked to be removed from the case and prior to her dismissal she noted to the trial judge that competency may be an issue. The trial judge also reprimanded Turpin for "threatening" the public defender during this proceeding.[2] Second, Turpin made several statements during the proceedings leading up to trial that did not make sense. He asked his first attorney not to be "mean" to him when she asked the trial judge to remove her from the case. He also informed the trial judge that he was going to consult with the ACLU because of his "baked brain syndrome." Third, at his sentencing, Turpin argued for the first time that he suffered from a number of mental issues ranging from schizophrenia to panic attacks. His children discussed his problems with the trial judge, citing diabetes, post-traumatic stress disorder and other mental issues. Turpin believes that this was sufficient to put the trial judge on notice that his competency to stand trial may be an issue; therefore, a psychiatric evaluation and competency hearing were required.

[2] It is unclear exactly what Turpin said to Lytle, but it is uncontroverted that the trial judge admonished him to behave properly.

In response, the Commonwealth maintains that Turpin was competent to stand trial and that the trial judge did not err by failing to order a competency hearing. In support of this position, the Commonwealth points to several facts that demonstrate Turpin's competency and his ability to participate rationally in his defense. For example, Turpin appeared before the trial court on no fewer than eleven occasions, and the court was afforded multiple opportunities to observe his demeanor. At the pretrial hearing held on March 23, 2007, it was made apparent that Turpin knew he had the right to hire private counsel because he asked the trial court to dismiss Lytle as his attorney and to allow him to retain private counsel. At trial, Turpin asked to speak with the trial judge and indicated that he felt his attorney was unprepared for trial and had not properly consulted with him. Turpin also expressed his desire for a continuance so that his son could be present at trial and testify on his behalf since he was present when the incident in question occurred. Turpin also demonstrated an ability to follow the testimony at trial and to recount the evidence against him when he indicated his belief that a witness had lied during his testimony and gave specific reasons why.

The Commonwealth further notes that Turpin's trial counsel did not feel that Turpin's competency was in issue since he failed to request a competency evaluation. After the trial concluded, trial counsel did discuss the possibility of sending Turpin to the Kentucky Correctional Psychiatric Center while waiting to be sentenced because of his "medical issues." The trial judge noted that he could not sentence an incompetent defendant and then recounted that Turpin lived by

himself, showed up for court when requested, and took care of several animals at home. Accordingly, he did not feel that there was a basis to send Turpin to the facility. It is the Commonwealth's position that because of these facts there are no grounds for this Court to find that Turpin's competency to stand trial was in issue.

KRS 504.090 sets forth that "[n]o defendant who is incompetent to stand trial shall be tried, convicted or sentenced so long as the incompetency continues." Under KRS 504.060(4), "'[i]ncompetency to stand trial' means, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one's own defense[.]" A defendant is considered competent if he can "consult with his lawyer with a reasonable degree of rational understanding" and has "a rational as well as factual understanding of the proceedings against him." *Godinez v. Moran*, 509 U.S. 389, 396, 113 S.Ct. 2680, 2685, 125 L.Ed.2d 321 (1993), *quoting Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824 (1960); *see also Bishop v. Caudill*, 118 S.W.3d 159, 162-63 (Ky. 2003). "[A] competent defendant can make a 'reasoned choice' among the alternatives available to him when confronted with such crucial questions as whether he should testify, waive a jury trial, cross-examine witnesses, put on a defense, etc." *Bishop*, 118 S.W.3d at 163*, quoting Godinez*, 509 U.S. at 397-98, 113 S.Ct. at 2686.

The standard of review in cases such as this one requires us to consider "[w]hether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have

experienced doubt with respect to competency to stand trial." *Mills*, 996 S.W.2d at 486, *quoting Williams v. Bordenkircher*, 696 F.2d 464, 467 (6th Cir. 1983). "Evidence of a defendant's irrational behavior, his demeanor in court, and any prior medical opinion on competence to stand trial are all relevant facts for a court to consider" in determining when a competency hearing is required. *Id.*

With this said, "reasonable grounds [to hold a competency hearing] must be called to the attention of the trial court by the defendant or must be so obvious that the trial court cannot fail to be aware of them." *Gibbs v. Commonwealth*, 208 S.W.3d 848, 853 (Ky. 2006), *quoting Gabbard v. Commonwealth*, 887 S.W.2d 547, 552 (Ky. 1994). "[T]rial judges cannot be aware of everything happening in every case before them and cannot be required to *sua sponte* hold competency hearings." *Gabbard*, 887 S.W.2d at 552. Ultimately, "[i]t is within the trial court's discretion to determine whether there are 'reasonable grounds' to believe a defendant may be incompetent to stand trial." *Bishop*, 118 S.W.3d at 161; *see also Gray v. Commonwealth*, 233 S.W.3d 715, 718 (Ky. 2007) (internal citations omitted). "However, once facts known to the trial court are sufficient to place a defendant's competency in issue, an evaluation and evidentiary hearing are mandatory." *Bishop*, 118 S.W.3d at 161.

Because Turpin is raising the competency issue for the first time on appeal, we must determine – using an abuse of discretion standard – whether reasonable grounds for a hearing in this case were so obvious that the trial court should have been aware of them. *See Gibbs*, 208 S.W.3d at 853, *quoting Gabbard*,

887 S.W.2d at 552; *Gray*, 233 S.W.3d at 718. After a thorough review of the record and consideration of the parties' arguments, we conclude that the Estill Circuit Court did not abuse its discretion in failing to *sua sponte* order that Turpin undergo a competency evaluation and that a competency hearing be held.

As noted above, Turpin was involved in his trial and displayed an understanding of his legal rights. For example, he knew that he was entitled to a public defender and also knew that he could have that attorney removed from his case and seek private counsel. He requested that his son be called to testify, which demonstrates his knowledge of how a trial should proceed. He also urged the importance of having his son testify because of the possible punishment he faced, which showed his appreciation for the severity of the charges against him. We also note that Turpin appeared before the trial court on multiple occasions over an extended period of time, which afforded the trial judge ample opportunity to observe his demeanor and his ability to understand and appreciate the proceedings against him. Accordingly, we believe that the trial court did not abuse its discretion in failing to *sua sponte* order a competency hearing.

For the foregoing reasons, the judgment of the Estill Circuit Court is affirmed.

ALL CONCUR.

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