

IN THE CIRCUIT COURT, OF THE  
SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FL

CASE NO.: 2013-CF-000763  
DIVISION: 50

STATE OF FLORIDA

vs.

JOSEPH FRANK BOVA II,

Defendant.

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**ORDER FINDING DEFENDANT COMPETENT**

THIS CAUSE came before the Court for an evidentiary hearing to determine if the defendant is mentally competent to proceed under Rule 3.210, et seq., *Fla. R. Crim. P.* (2017) and 916.12, *Fla. Stat.* (2013) and the Court, having heard arguments from counsel and having considered the written reports of the examining medical witnesses, testimony of the experts and witnesses, any further evidence or testimony offered at the hearing and being otherwise fully advised of the premises, finds:

(1) Mental Competency Exams were administered to the defendant by appropriately qualified and credentialed medical experts and any significant findings were summarized in the written reports of such experts filed with the Court and received into evidence. Such reports appropriately addressed the element to determine mental competency as required under Rule 3.211(c). The Court heard the testimony of the examining medical experts on the issue of the defendant's competency to proceed to trial. The Court also heard the testimony of the defendant and, during the hearing, heard more testimony and argument from the defendant in a quasi-Nelson hearing.

(2) The defense filed a Suggestion of Mental Incompetency on May 21, 2019. Thereafter, the defense had the defendant examined by their expert, Dr. Joseph J. Sesta, a Neuropsychologist, to support their contention that the defendant was incompetent. Dr. Sesta examined the defendant on May 28 and June 6, 2019 but because the defendant initially refused to meet with him, Dr. Sesta was only able to spend about 1 1/2 hours meeting with and examining the defendant. In addition, Dr. Sesta did not have enough time or cooperation from the defendant to administer any standardized neuropsychological testing, as the doctor had intended. He was able, however, to complete his gross neurologic exam, review the defendant's medical treatment records and conduct some limited interviews with family and attorneys.

Dr. Sesta was able to evaluate the 6 statutory criteria for competency under 916.12 and opined that the defendant lacked (i) an understanding of the adversary process, (ii) the capacity to disclose facts pertinent to the proceedings, and (iii) the capacity to testify relevantly. Dr. Sesta observed that the defendant refused to cooperate or assist in his competency evaluation and, based largely on that observation alone, Dr. Sesta concluded that the defendant clearly lacked an understanding of the severity of the charges and lacked the capacity to understand the importance of his participation in the evaluation. Since the defendant had been restored to competency in the past, Dr. Sesta opined that the defendant would benefit from additional restorative services.

Interestingly, on the morning of the hearing, Dr. Sesta, the state's 2 experts, the attorneys and defendant had extensive discussions about the issues of the case and, in particular, the defendant's competency to proceed. The Court was not in session or present but by all accounts these discussions went on for about 30 minutes and were described by all 3 experts, as material and useful in addressing the defendant's competency. All 3 experts and both counsel made mention of such discussion in their testimony and argument.

(3) The state presented 3 witnesses, including 2 experts, Dr. Dara E. Granger and Dr. Roger Davis. The first witness was nurse Elizabeth Sparkman. She testified that she observed the defendant at the jail over the last few weeks and was familiar with his treatment notes and records. Based on those records and her personal observations, she confirmed that the defendant regularly took his prescribed medication, including 2 antipsychotic medications.

Dr. Granger provided treatment to the defendant for mental illness and competency restoration at Northeast Florida State Hospital from April 9, 2018 to April 29, 2019. She also evaluated the defendant for competency in February, 2019. Unlike the defense witnesses, Dr. Granger had interviewed, observed and interacted with the defendant numerous times in a clinical setting. She was very familiar with his history and directly participated and supervised his treatment at Northeast Florida State Hospital. She also had the benefit of discussions with the defendant's treatment team about the defendant's prognosis and progress. Based on her competency evaluation, Dr. Granger opined that the defendant had the rational capacity to understand the nature of the adversary criminal process and was competent to proceed.

Specifically, Dr. Granger met with the defendant for over an hour and again reviewed his treatment records and progress notes. She found that the defendant understood the seriousness of the charge and the possible penalties. He understood that the maximum sentence if convicted could be life in prison. When asked about legal proceedings, the defendant accurately described the roles of the state attorney, defense attorney and judge. He understood a plea bargain and plea negotiations. He specifically understood and discussed what would happen if he was found not guilty by reason of insanity. Dr. Granger observed that the defendant understood and could make rational decisions concerning trial procedures and plea bargains.

Dr. Granger also found that the defendant was cooperative with her examination and readily disclosed pertinent facts of the cause and incident. He appeared to be able to accurately recall the pertinent facts of the incident and relate those facts in an orderly and comprehensive manner. She also opined that the defendant understood the necessity of appropriate courtroom behavior and could manifest appropriate behavior during all court proceedings. Commendably, Dr. Granger discussed her findings and evaluation with the treatment team before finalizing her report. Based on her review and evaluation, Dr. Granger found that the defendant met the 6 characteristics consistent with mental competency and, therefore, was competent to proceed.

The strength of Dr. Granger's opinions came from her superior familiarity with Mr. Bova and his treatment from her direct and lengthy clinical experience treating and evaluating him. The weakness in her opinion was the amount of time between her assessment in February and the date of the hearing in July, almost 5 months. Experience has shown that Mr. Bova can decompensate over a short period of time and his competency can change. For those reasons, the Court inquired of Dr. Granger regarding the specific symptoms that Mr. Bova would exhibit if he had, in fact, decompensated in the 5 months since she evaluated him. She testified that Mr. Bova would show symptoms consistent with his underlying diagnosis of schizophrenia, i.e. psychosis, audio or visual hallucinations, bizarre behavior and noncompliance with medication.

(4) Dr. Roger Davis was appointed by the Court to perform an updated competency evaluation. Dr. Davis met with the defendant for over an hour and found him to be open and cooperative. Dr. Davis described Mr. Bova as calm and pleasant. Despite the defendant's disheveled appearance, lack of hygiene, and somewhat flat affect, Dr. Davis found that Mr. Bova was appropriate in his behavior and responses and provided a detailed and accurate medical history. The defendant remained alert, oriented and cooperative throughout the evaluation. The defendant also demonstrated good short term and long term memory and an appropriate understanding of the legal process. With regard to specific symptoms related to the defendant's diagnosis of schizophrenia, Dr. Davis found that Mr. Bova's speech and thoughts were organized, relevant, and showed reasonable judgment. He demonstrated a complete lack of auditory or visual hallucinations, false or delusional beliefs, paranoid thoughts, depression, anxiety or mania. Dr. Davis talked with Mr. Bova's defense counsel and their concerns for Mr. Bova's competency. He specifically inquired regarding Mr. Bova's demeanor and behavior since returning from treatment to determine whether Mr. Bova was showing signs of decompensation.

In contrast to Dr. Sesta's examination, Dr. Davis found Mr. Bova cooperative in his examination without the resistance or hesitance described by Dr. Sesta. In fact, Dr. Davis did not observe or describe any particularly odd behavior by the defendant during the exam. Importantly, Dr. Davis found that Mr. Bova was fully compliant with his medication. When Dr. Davis questioned Mr. Bova about this, Mr. Bova said that his medications worked "great" and he no longer experiences auditory hallucinations.

Mr. Bova confirmed that he understood that he was charged with first degree murder for shooting and killing a female clerk at a gas station and that felonies were more serious than misdemeanors. He knew that the sentence for first degree murder could be life in prison or the death penalty. He also understood and could accurately describe the roles of the defense attorney, prosecutor and judge. He knew about pleas, negotiated pleas and the plea bargaining process. He could accurately describe the difference between a plea of guilty, not guilty and no contest. He also knew that a jury could find him not guilty by reason of insanity and the consequences of such a verdict.

Mr. Bova provided Dr. Davis with a detailed and consistent account of the incident and Dr. Davis could find no impediment to Mr. Bova's ability to provide the same detailed account to his attorneys and their experts. Dr. Davis also found that Mr. Bova understood the need for honesty and good behavior in the courtroom and could manifest such behavior. Accordingly, Dr. Davis found that Mr. Bova could testify accurately and relevantly if called upon in his case.

Based on these findings and observations, Dr. Davis found that Mr. Bova was competent to proceed. Importantly, Dr. Davis found that Mr. Bova's schizophrenia and symptoms are in remission, perhaps based on Mr. Bova's consistent use of his therapeutic prescriptions, and that Mr. Bova is not decompensating. Mr. Bova's repeated statements to Dr. Davis that he (Mr. Bova) was competent is perhaps an explanation for why Mr. Bova appeared more cooperative with Dr. Davis than his own defense expert and team.

The Court accepts the opinions of Dr. Granger and Dr. Davis over the opinion of Dr. Sesta for 3 reasons. First, Dr. Granger has the most clinical experience with Mr. Bova. She has been seeing, examining and treating him for over a year. As a result, she has the best perspective to assess Mr. Bova's competency. Second, for reasons not entirely clear to the Court, Mr. Bova chose to fully cooperate with Dr. Granger and Dr. Davis in their exams. Mr. Bova initially refused to meet with Dr. Sesta and then, even after agreeing to meet, begrudgingly provided limited information and limited cooperation in Dr. Sesta's exam. Dr. Sesta didn't have the same opportunity to fully assess Mr. Bova's competency. Finally, it seems

logical that if Mr. Bova was to decompensate, as feared by Dr. Sesta, Mr. Bova would resort to his prior symptoms of schizophrenia, i.e. psychosis, audio or visual hallucinations, bizarre behavior and noncompliance with medication. Yet, Mr. Bova demonstrated none of those symptoms at the hearing or at the exams by Dr. Granger and Dr. Davis. To the contrary, Mr. Bova was fully compliant with his medication, was not reported to hear voices or other hallucinations and did not present with any active psychosis. While Mr. Bova's appearance certainly might raise some eyebrows, his reported hygiene, dress, speech and mannerisms were deemed appropriate.

Based on the extensive and comprehensive evaluations of the defendant's competency received by this Court in the form of written opinion and expert testimony, this Court finds that Mr. Bova is currently competent to proceed. In reaching this conclusion, the Court finds that the defendant has sufficient mental competency and capacity to:


- (a) appreciate and understand the charges or allegations against the defendant;
- (b) appreciate and understand the range and nature of possible penalties, if applicable, that may be imposed against the defendant in these proceedings;
- (c) understand the adversary nature of the legal proceedings;
- (d) disclose to counsel facts pertinent to these proceedings;
- (e) testify competently; and
- (f) generally assist counsel in the preparation of a defense.

The Court also notes that the defendant's demeanor and behavior at the hearing and before the Court suggests that the defendant understands the nature of these proceedings and the charges filed against him in this case. The defendant appeared appropriately oriented to the proceedings and respectful and courteous in behavior.

For the foregoing reasons, it is hereby:

ORDERED AND ADJUDGED that the defendant is determined to be mentally competent to proceed in this matter.

DONE AND ORDERED in Chambers in Bunnell, Flagler County, Florida.

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e-Signed 8/2/2019 2:05 PM 2013 CF 000763

TERENCE R. PERKINS  
CIRCUIT JUDGE

cc: Joshua Mosley, Esquire – [mosley.joshua@pd7.org](mailto:mosley.joshua@pd7.org)  
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