[Cite as *In re J.W.*, 2011-Ohio-1163.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

IN THE MATTER OF: J.W., DELINQUENT CHILD.	**:**	**O P I N I O N**
	:	**CASE NO. 2010-G-2972**

Appeal from the Court of Common Pleas, Juvenile Division, Case No. 09 JD 000370.

Judgment: Affirmed.

David P. Joyce, Geauga County Prosecutor, and *Nicholas A. Burling*, Assistant Prosecuting Attorney, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Appellee, state of Ohio).

R. Robert Umholtz, Geauga County Public Defender, and *Dawn M. Gargiulo*, Assistant Public Defender, 211 Main Street, Chardon, OH 44024 (For Appellant, J.W.).

CYNTHIA WESTCOTT RICE, J.

{¶1} J.W., the minor-appellant in this matter, appeals from the Geauga County Court of Common Pleas, Juvenile Division, finding him competent to stand trial. For the reasons discussed in this opinion, the trial court's judgment is affirmed.

{¶2} On July 20, 2009, appellant was charged with the crime of gross sexual imposition, in violation of R.C. 2907.05, a felony of the third degree if committed by an adult. On August 31, 2009, defense counsel filed a motion for a competency evaluation, which the trial court later granted. A forensic psychologist, Thomas G. Gazley, Ph.D., was appointed by the court to conduct the evaluation. After interviewing

appellant for approximately 90 minutes, Dr. Gazley concluded appellant was not competent to stand trial.

{¶3} On November 6, 2009, a hearing was held on the issue of appellant's competency at which Dr. Gazley was the only witness. Prior to taking testimony, the state stipulated to Dr. Gazley's factual findings, but disputed the ultimate conclusion that appellant failed to meet the standard for legal competency.

{¶4} At the hearing, Dr. Gazley testified appellant was 14 years-of-age at the time of the evaluation. With respect to appellant's history, it was established he had been diagnosed with attention deficit hyperactivity disorder ("ADHD") and agenesis of the corpus collosum (a condition in which the two hemispheres of the brain do not communicate with one another). Appellant's cognitive ability was in the second percentile relative to similarly-aged individuals, i.e., his intelligence level is better than or equal to two percent of all 14 year olds. These results place appellant on the cusp of borderline minor mental retardation. The doctor testified, however, appellant would not qualify for developmental disability services.

{¶5} With respect to appellant's current mental status, Dr. Gazley testified appellant presented no evidence of thought disorders or tangential thought processes. And although appellant has an unusual speech pattern, the evidence indicated he spoke in a clear and coherent manner. The doctor testified, however, appellant easily lost his train of thought while speaking. When this occurred, appellant could be redirected to the relevant topic if adequately prompted.

{¶6} With respect to appellant's ability to comprehend the underlying legal proceedings, the doctor testified appellant was capable of recalling and relating the

conduct or actions which led to his charge. Appellant further understood that the charge was "serious." When asked why he felt it was a serious charge, appellant justified his response by merely noting: "I did something wrong." To further test appellant's understanding, the doctor asked appellant to provide an example of a more serious charge. Appellant answered "murder." When asked if he could identify a less serious charge, appellant cited "robbing a store." When asked to explain this response, appellant stated that robbery involves "taking money." Although appellant evidently believed there was some qualitative difference between robbery and gross sexual imposition, the doctor testified appellant did not elaborate on why he thought taking money was less serious than his offense.

{¶7} When asked if he was aware of the sanctions the court could impose, appellant initially responded: "I would probably not see my family; I would go to jail or something else," like a foster home. Appellant also had a basic awareness of the most serious punishment the court could impose; namely, "put me in jail until I'm 21."

{¶8} According to Dr. Gazley, appellant expressed a fair understanding of the nature of a trial and the meaning of the terms "guilty" and "not-guilty." Appellant was further able to communicate the role of the judge and defense counsel; according to Dr. Gazley, however, appellant had difficulty appreciating the prosecutor's role as an adversary. Appellant apparently believed the state's investigator was the party against whom he would be defending himself.

{¶9} Dr. Gazley also reported appellant had some difficulty understanding the process of plea bargaining. After providing several brief explanations of the process, however, appellant stated: "The other attorney tells my lawyer if I plead guilty, I get less

charge or something and there's no trial." Although appellant was asked again about the process later in the assessment, he was unable to re-articulate his former answer until the doctor explained the process anew. While the doctor expressed concern about the difficulty appellant had comprehending the process in the abstract, he conceded "it's one of those concepts that many[,] many juveniles have a difficult time with." In any event, Dr. Gazley testified appellant was aware of the practical consequences of entering a plea of guilty, viz., that he would receive a "lighter charge" as well as a "lighter penalty." Notwithstanding this point, however, Dr. Gazley felt that appellant would be unable to evaluate the risks of going to trial as opposed to entering a plea agreement.

{¶10} With respect to appellant's ability to assist in his defense, Dr. Gazley testified appellant understood that his attorney's goal is "*** to show I'm not guilty." When asked how he might help his lawyer, however, he stated, "I don't know." Dr. Gazley next asked appellant why it would be helpful to be truthful when communicating with his lawyer, to which appellant responded, "[b]ecause it's bad to lie to a lawyer." Dr. Gazley testified this response was troubling because it failed to reveal an appreciation for the more substantive reasons a defendant should be truthful and candid with his or her attorney. Despite his concern, the doctor testified that, in his view, appellant would be able to provide his attorney with a truthful rendition of the facts as he perceived them.

{¶11} In light of the information obtained from his assessment, Dr. Gazley concluded that appellant was unable to sufficiently understand the objective of the proceedings against him. In support of his opinion, the doctor explained:

{¶12} "He's able to recognize the behavior involved in the alleged offense. He has a difficult time with how serious an offense this is, other than being able to state it's serious, and being able to state that it's something wrong.

{¶13} "He knows some of the potential penalties available to the court; however, he doesn't have an appreciation of the full range or combination of potential penalties.

{¶14} "***

{¶15} "*** [H]e just looks at it as jail. He doesn't know that there's *** local detention; that there is *** a bigger state system for incarcerating youth.

{¶16} "He understands the meaning of entering a plea of true or guilty or a plea of not guilty or not true. He doesn't know, however, what happens once you do that, you know, what's the process that you go through.

{¶17} "***

{¶18} "He can think about some future consequences but that's one of the difficulties that was noted I think also in the evaluation team report, you know, they noted difficulties with his reasoning process *** difficulties with his, you know, looking at things in a particular order.

{¶19} "So it makes it - - it goes to making it difficult for [him] to understand *** what may happen next after he - - after he might enter a plea of some sort.

{¶20} "You know, I think another factor is his reasoning ability regarding the potential plea bargaining process is very limited.

{¶21} "***

{¶22} "As I said, he does have a factual understanding of the role and function of court personnel. But the only person he really believes is really against him is the investigator."

{¶23} Dr. Gazley further concluded that appellant would be unable to presently assist in his defense. In support, he testified:

{¶24} "*** [Appellant's] difficulty *** is going to be *** in the communication necessary to provide adequate assistance. *** [H]is language abilities and his limited intelligence *** are the things that get in the way. ***

{¶25} "I think I mentioned *** the percentiles. *** [T]hat's 98 percent of all other 14 year old youngsters are more adept, more intelligent, than he is. *** [H]is language and sequencing difficulties make it hard for him to present a good fact pattern. His difficulty sequencing information. His difficulties with detail. ***

{¶26} "The ADHD, though not interfering with his behavioral control *** is going to limit his ability to focus for lengthy periods of time to attend to tasks at hand. And again, *** testifying should he be asked to testify or should it be warranted that he testify, it's going to be difficult again for him based on his intelligence and his language abilities.

{¶27} "*** And I think more importantly *** in any legal proceedings that *** you have wealth of knowledge to present to your client. It's going to be very difficult for him to process that information. You know, he has to make *** as the defendant[,] some independent decisions about what to do, how to proceed *** based upon [counsel's] advice. And that's a frightening concept for a kid of his limited ability to have to face."

{¶28} The doctor further opined that, given appellant's limited intellectual abilities, appellant would be unable to independently evaluate legal advice and make an informed, sound decision.

{¶29} After hearing testimony and considering the exhibits, the trial court entered judgment finding appellant competent to stand trial. The court ruled appellant possessed a general, yet reasonable understanding of legal proceedings. The court further determined appellant possessed a reasonable understanding of the nature of the charges brought against him and the potential consequences if the complaint is found to be true. Finally, the court determined appellant was reasonably capable of assisting his attorney in his defense.

{¶30} Appellant filed a notice of appeal of the trial court's judgment on December 11, 2009. In *In re J.W.*, 11th 2009-G-2939, 2009-Ohio-7007, however, the appeal was dismissed. In holding this court lacked jurisdiction to entertain appellant's appeal, this court determined a trial court's determination that a criminal defendant is competent to stand trial is not a final, appealable order. Id. at ¶15.

{¶31} Subsequent to the dismissal entry, on January 21, 2010, appellant entered a plea of true to an amended delinquency charge of public indecency, in violation of R.C. 2907.09(A)(2), a misdemeanor of the second degree if committed by an adult. After accepting the plea, the court held a disposition hearing on May 10, 2010. Pursuant to appellant's plea of true, the court entered multiple dispositional orders. This appeal follows.

{¶32} Appellant assigns two errors for our review. His first assignment of error alleges:

{¶33} "The trial court erred in determining that appellant was competent to stand trial when all of the evidence admitted at the competency hearing indicated that the minor child was not competent."

{¶34} Under this assignment of error, appellant asserts the trial court erred in finding him competent where the weight of the evidence before the court demonstrated he was unable to understand the nature of the proceedings and unable to assist in his defense. We disagree.

{¶35} Juv.R. 32(A)(4) provides that a court may order a mental or physical examination where a party's competence to participate in the proceedings is at issue. There is no statutory basis, however, for a juvenile to plead that he or she is incompetent to stand trial. Nevertheless, Ohio courts have used the standards applied to determine the competency of adults under R.C. 2945.37 in evaluating the competency of juveniles, to the extent the standards are applied in light of juvenile, rather than adult norms. See, e.g., *In re Bailey*, 150 Ohio App.3d 664, 667, 2002-Ohio-6792.

{¶36} To this end, R.C. 2945.37(G) creates a presumption of competency. This presumption may be rebutted if the defendant proves, by a preponderance of the evidence, that because of his present mental condition, "he is incapable of understanding the nature and objective of the proceedings against him *or* of presently assisting in his defense." (Emphasis added.) Id.

{¶37} Acknowledging the distinction between an adult's and a minor's relative abilities to meet these criteria, the Fifth Appellate District has outlined a non-exhaustive

list of factors to assist a court in analyzing whether a minor is competent to stand trial. These factors include:

{¶38} "*** [A]ppellant's age and cognitive and intellectual development, appellant's problems with receptive or expressive language, the ability to understand and communicate during competency testing, the complexity of the case and the attorney's ability to simplify and explain complex issues, the seriousness of the charges in relation to the stress they could cause appellant during trial, any mental condition that would adversely affect appellant's ability to understand the proceedings or work with counsel, appellant's ability to understand the nature of the charges and the potential penalties, appellant's ability to provide an adequate definition of the judge, defense attorney and prosecutor." *In re Kristopher F.*, 5th Dist. No. 2006CA00312, 2007-Ohio-3259, at ¶27.

{¶39} As with any context-dependent matter, none of the above factors are dispositive and, depending on the circumstances of the individual, some may be entitled to more weight than others. In short, the factors are simply assistive guidelines for approaching a competency determination when a minor is the subject of the analysis.

{¶40} With these points in mind, an appellate court will not disturb a trial court's competency determination if the record demonstrates there was some reliable, credible evidence to support its conclusion. *State v. Williams* (1986), 23 Ohio St.3d 16, 19.

{¶41} Appellant first argues the trial court erred in finding him competent to stand trial because the only evidence received was Dr. Gazley's testimony which indicated, in his expert opinion, appellant was not competent to stand trial. In support, appellant cites *In re Anderson*, 5th Dist. No. 2001AP030021, 2002-Ohio-776. In that

case, the juvenile's attorney did not submit any evidence contrary to the testimony of the state's expert. After hearing the evidence, including the expert's conclusion that the juvenile was competent, the court found the juvenile competent. Appellant asserts because the state did not submit any evidence contrary to his expert's testimony in this case, pursuant to *Anderson*, the trial court was bound to accept the expert's conclusions. We disagree.

{¶42} *Anderson* does not stand for the bald conclusion that a court must enter judgment for the side offering evidence in a competency case where the opposing side offers no evidence of its own. In *Anderson*, the expert's conclusion merely buttressed the statutory presumption of competency. Because the defendant in *Anderson* offered nothing to rebut the presumption, the court properly ruled the defendant was competent to stand trial.

{¶43} In this case, although the prosecutor did not call a witness, the court concluded the evidence gleaned from Dr. Gazley's testimony and report, as well as other evidence and information within admitted exhibits, failed to rebut the presumption. Appellant fails to recognize that, even though his expert was the only witness to testify, the evidence offered by Dr. Gazley may have been legally insufficient to prove, by a preponderance of the evidence, that he was not competent. The issue, therefore, is whether the evidence introduced at the hearing was sufficient to support the trial court's ruling in light of the applicable legal standard. We hold that it was.

{¶44} Although appellant's intellectual functioning and abilities to express and receive information were well below average, the evidence indicated he was aware of the conduct which occasioned the charge and was aware that the charge was serious.

Appellant understood the concepts of pleading "guilty" and "not-guilty" as well as the consequences of each plea. Appellant was further able to fairly articulate the possible penalties available to the court if he were found guilty, including the harshest available punishment.[1] Appellant additionally possessed a reasonably sound grasp of the juvenile process, having a clear understanding of the roles of the judge as well as defense counsel and a fair appreciation of what a trial entails. Notwithstanding his various deficits, we therefore hold there was reliable, credible evidence to support the trial court's decision that appellant was reasonably capable of understanding the nature and objective of the proceedings against him.

{¶45} Furthermore, although Dr. Gazley testified appellant's limited intelligence would hinder his ability to communicate with his attorney and evaluate competing legal options, this does not necessarily imply he was incapable of assisting in his defense. Dr. Gazley testified appellant would be able to truthfully recount the facts underlying the charge, as he perceived them, to his attorney. Once his attorney is aware of the details leading to the charge, she could select a proper legal strategy to mount an effective defense; considering and utilizing legal defenses, in light of the facts as a defendant has related them, are matters within the exclusive domain of defense counsel. To the extent appellant was able to assist counsel in executing her duties as an advocate, he was fundamentally capable of assisting in his defense.

{¶46} Next, although Dr. Gazley expressed concerns about appellant's ability to appreciate the dynamics of plea negotiations "in the abstract," we do not find this issue

1. Even though appellant did not distinguish between "jail" and "juvenile detention," we believe this distinction does not necessarily affect his ability to understand the ultimate effect of a finding of true in the case, i.e., whether in jail or in juvenile detention, appellant would be detained away from his home by order of the court.

problematic. First of all, Dr. Gazley testified the legal nuances of plea bargaining is difficult for many juveniles. This directly indicates appellant's problem understanding the concept of plea bargaining is neither unique to him nor a function of his particular intellectual deficits.

{¶47} Moreover, in the usual course of proceedings, a criminal defendant's ability or inability to explain what occurs during a plea negotiation is in no way connected to his or her ability to assist in his own defense. It is a criminal defense attorney who must know and appreciate the details of plea negotiations "in the abstract" because it is the criminal defense attorney who is the direct party to those negotiations. The criminal defendant, while potentially affected by the results of the negotiations, is not typically involved in the bargaining process himself. Knowledge of the "nuts and bolts" of plea bargaining, therefore, is arguably superfluous. In most cases, including this one, it is sufficient that the defendant has the capacity to understand the benefits of accepting a favorable deal. Dr. Gazley stated appellant possessed this understanding. We therefore conclude that appellant's difficulty comprehending *the process* of plea negotiations is of little consequence.

{¶48} In this case, the record demonstrates appellant had a basic, yet reasonable, understanding of (1) the charges against him and the consequences of a conviction and (2) the manner in which the system operates including the roles of important players. The record further demonstrates appellant was reasonably capable of meaningfully assisting in his defense. Therefore, we hold there was reliable, credible evidence to support the trial court's decision adjudicating appellant competent to stand trial.

{¶49} Appellant's first assignment of error is without merit.

{¶50} For his second assignment of error, appellant argues:

{¶51} "Appellant's right to due process was violated when he was forced to proceed while not competent to stand trial."

{¶52} Appellant's second assignment of error presumes he was not competent to stand trial. As we have held appellant was competent to stand trial, his rights to due process were not violated.

{¶53} Appellant's second assignment of error is overruled.

{¶54} For the reasons discussed in this opinion, appellant's two assignments of error are overruled. Thus, the judgment of the Geauga County Court of Common Pleas, Juvenile Division, is hereby affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDELL, J.,

concur.