

STATE OF VERMONT
WINDHAM COUNTY, SS

State of Vermont

v.

Michael Armstrong,
DefendantDISTRICT COURT
Docket No. 262-2-04 WmcrORDER

On May 3 and 4, 2007, the process of selecting a jury for trial of this case began. During that process, defense counsel expressed serious concerns regarding his client's competency to stand trial. Based upon those concerns, the jury drawing was cut short, and the court ordered a competency evaluation of the defendant. On May 7, Dr. Paul Cotton's competency evaluation was filed with the court. In that report, Dr. Cotton concluded that the defendant is in fact incompetent to stand trial, based upon his mental retardation and consequent inability to consult with his lawyer with a reasonable degree of rational understanding and his lack of a rational as well as factual understanding of the proceedings against him. On May 10, 2007, the hearing on competence was begun. The State now requests that it be permitted to have the defendant examined by another expert, of its choosing, to evaluate his competency, and also to have testing conducted to determine the defendant's adaptive functioning. Dr. Cotton did not test the defendant's adaptive functioning.

Under 13 V.S.A. § 4817(a) and longstanding common law tradition, a person shall not be tried for a criminal offense unless he is competent to stand trial. A court "may order the department of health to have the defendant examined by a psychiatrist" if "the

court believes there is doubt about the defendant's competency to be tried." 13 V.S.A. §4814(a)(4). A hearing must be held under Section 4817(b) after a report has been submitted by the examining psychiatrist. In this case, the examination has been conducted, and the report submitted. The case is now ripe for hearing on the basic issue of competence. No further provision is made in the statutes for any independent examination of the defendant by any expert on behalf of any party.

V.R.Cr.P. 16.1(a)(1)(I) explicitly limits the court's authority to order a defendant to submit to a mental examination at State request to situations in which "notice is given by the defendant that sanity is in issue or that expert testimony will be offered...relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issues of guilt." The issue of the defendant's competence is not a defense and does not bear upon guilt, but is a due process requirement for trial. Therefore, Rule 16.1 has no application here.

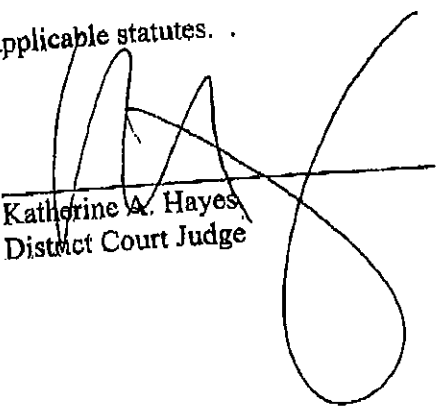
The court therefore concludes that it does not have the authority, at this stage of the proceedings, to permit an "independent" examination of the defendant or the introduction of evidence of any such examination by or for either the State or the defendant.*

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A ~~one~~-hour continuation of the hearing on competence begun on May 10 will be scheduled forthwith. If either party wishes Dr. Cotton to be present, they should notify

* The court notes that this order will not prevent either party from requesting additional examinations regarding the defendant's adaptive functioning to be ordered in the event that the defendant is found to be incompetent, at which point a commitment hearing is required. The standards applicable at that stage of the proceedings would, in the court's view, require a finding that the defendant's adaptive functioning was significantly impaired before commitment to the Department of Mental Health could be considered. See 18 V.S.A. § 7101(12) and 18 V.S.A. § 8722(2).

the court immediately so that notice can be provided to him. The court understands that the State may wish to call Dr. Jonathan Weker, who conducted a competency evaluation of the defendant under the applicable statutes at the request of the Windsor District Court. In the court's view, the presentation of Dr. Weker's opinions and other evidence, by either side, is proper and consistent with the applicable statutes. .

July 15, 2007


Katherine A. Hayes
District Court Judge