

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 :  
 **v.** : **CP-41-CR-1634-2017**  
 :  
 :  
 **GRAHAM N. NORBY-VARDAC,** : **COMPETENCY**  
 **Defendant** : **DETERMINATION**

**OPINION AND ORDER**

On April 7, 2017, Graham Norby-Vardac (Defendant) was interviewed and charged by the Pennsylvania State Police with one count of Criminal Homicide,<sup>1</sup> two counts of Aggravated Assault,<sup>2</sup> one count of Burglary,<sup>3</sup> one count of Robbery,<sup>4</sup> one count of Criminal Trespass,<sup>5</sup> one count of Possession of an Instrument of a Crime,<sup>6</sup> one count criminal mischief,<sup>7</sup> and one count of Theft by Unlawful Taking.<sup>8</sup> The charges arise out of Pennsylvania State Police being dispatched to the home of Donald Kleese Jr. for a report of a deceased body. Upon arrival, they found Victim dead in his bedroom bloody around his arms, neck, and head from an apparent break-in and attack. In addition, Victim's vehicle was missing. Contemporaneously, Defendant was detained at the Canadian border driving Victim's missing vehicle with blood on his clothing and a black eye. Defendant filed a timely Omnibus Pretrial Motion on November 15, 2017, which was seeking to suppress evidence and declare Defendant incompetent. The Motion to Suppress Evidence was later withdrawn and a hearing was held on Defendant's competency, August 30, 2018.

---

<sup>1</sup> 18 Pa. C.S. § 2501(a).

<sup>2</sup> 18 Pa. C.S. § 2702(a)(1), (4).

<sup>3</sup> 18 Pa. C.S. § 3502(a)(1)(i).

<sup>4</sup> 18 Pa. C.S. § 3701(a)(1)(i).

<sup>5</sup> 18 Pa. C.S. § 3503(a)(1)(ii).

<sup>6</sup> 18 Pa. C.S. § 907(a).

<sup>7</sup> 18 Pa. C.S. § 3304(a)(5).

<sup>8</sup> 18 Pa. C.S. § 3921(a).

## **Testimony and Expert Reports**

To date Defendant has had three separate medical evaluations by different professionals/experts in the field. One was conducted by Dr. Pogo Voskanian at request of defense counsel on October 4, 2017. One was ordered by this Court on June 7, 2017 and was conducted by Dr. John K. Northrop on July 1, 2017. The third was undertaken by the Commonwealth and conducted by Dr. John O'Brien on June 18, 2018. Both Dr. O'Brien and Dr. Voskanian testified at the Competency Hearing on August 30, 2018.

Although the three interviews revealed similarities, all three received an almost identical recitation of the events around the time of the incident. Defendant stated he was traveling north to Canada on his bicycle following the GPS on his phone. When he reached Williamsport he was exhausted, hungry, and tired. He broke a window with a shovel to gain entry into a house he thought was abandoned. When he entered the house he discovered a dead body in one of the bedrooms. Instead of calling the police he took some coins and the keys to an old car outside. He then took off to Canada in the vehicle, before being stopped at the Canadian border.

### ***Dr. Pogo Voskanian's Report and Testimony***

Dr. Voskanian issued a report stating his medical opinion and conclusion as to Defendant's competency to stand trial. This report was based off his two and a half (2 ½) hour interview of Defendant on October 4, 2017, interviews with both of his parents, and a number of documents relating to this incident and Defendant's history. Dr. Voskanian's Evaluation 10/17/17, at 1. During Dr. Voskanian's discussion with Defendant regarding his childhood, he stated that he was "bullied a lot" and that he had no friends because he was shy and insecure. *Id.* at 5. Defendant also talked about his alternate world, which he stated he was in at that

moment. *Id.* This reality is “disappointing [and] dull” and he has never had physical contact or had a girlfriend, but in his personal reality he has a girlfriend, his “twin soul,” he is not human, and he can remember all of his past lives. *Id.*

Regarding education, Defendant attended many private schools before graduating from a school for people with special needs. *Id.* at 6. After graduating he attended Northern Virginia Community College for a few semesters, but did poorly, would often get into fights and was bullied. *Id.* When he was eleven (11) or twelve (12) his parents divorced and he stated his stepfather abused him. *Id.* He worked sporadically, but had difficulty holding down a job. *Id.* Defendant was diagnosed early on in his childhood with autistic disorder. *Id.* at 25. In September of 2000, he was diagnosed with ADHD. *Id.* As a result of his condition he would often act impulsively and aggressive in nature. *Id.* At the age of eighteen Defendant began experiencing auditory hallucinations. *Id.*

In Dr. Voskanian’s diagnostic opinion, a diagnosis of Autistic Disorder was correct at an early age as he meets the criteria. *Id.* at 32. He similarly diagnoses Defendant with Autistic Spectrum Disorder. *Id.* at 33. This is evidenced by his narrow range of interests, not being able to form friendships, impaired social functioning, and “hyperactivity to sensory input, such as sensitivity to noise and acting out violently when stimulated.” *Id.* at 32. Dr. Voskanian also diagnosed Defendant with schizophrenia due to his auditory hallucinations. *Id.* at 33.

As for Defendant’s competency to stand trial, Dr. Voskanian finds that he has an acceptable factual understanding of the proceedings. *Id.* He understands the roles of the parties, attorneys, and judge and understands the process of being found guilty. *Id.* But, in Dr. Voskanian medical opinion, he lacks the rational capacity to be considered competent to stand

trial because he would not be able to assist his attorney in his defense. *Id.* “Defendant’s reality testing is severely impaired. He is looking for an escape from his current circumstances into his reality.” *Id.* Dr. Voskanian again interviewed Defendant for an hour prior to the hearing on August 30, 2018 and was not changed in his opinion, although he believes the medication is making him more docile and easier to communicate with. Dr. Voskanian testified that he believes Defendant to be highly suggestible and cannot separate fantasy from reality. Also Dr. Voskanian thinks his diagnosis is why Defendant fixates on the fact there is no fingerprints on the shovel and therefore he cannot be found guilty.

***Dr. John O’Brien’s Report and Testimony***

Dr. O’Brien created a report stating his medical opinion and conclusion as to Defendant’s competency to stand trial. This report was based off of his interview of Defendant that lasted one (1) hour and forty-five (45) minutes on June 18, 2018, and his review of the documents relating to this incident and Defendant’s history. Dr. O’Brien’s Evaluation 08/20/18, at 1. During their interview, Defendant described his childhood as “O.K.” but states that his stepfather was very abusive. *Id.* at 14. Defendant told Dr. O’Brien he suffered from autism. *Id.*

Defendant stated he was in a few different schools and was in special education classes. *Id.* He attended Northern Virginia Community College but was a “relatively poor student” and he had sporadic employment. *Id.* at 14-15. When asked about what difficulties stemmed from his diagnosis of autism, Defendant stated difficulty making friends and concentrating. *Id.* at 15. He additionally stated he enjoyed living on his own and cooking and providing for his own needs. *Id.* Defendant indicated that he would often meditate and indulge in fantasy. *Id.* at 16. Dr. O’Brien indicated that his thoughts during these meditation

periods were to be considered psychotic symptoms, including “auditory hallucinations and grandiose ideations.” *Id.* at 17. During incarceration, Defendant felt as though he would have “mood swings privately,” but had not acted out violently since arriving and being placed “in the hole” because he did not wish to have that happen again. *Id.*

Defendant also brought up his “twin flame” which was something that only occurred during meditation. *Id.* Dr. O’Brien stated that Defendant “demonstrated an intact understanding of his current pending criminal charges and potential outcomes of his prosecution.” *Id.* Defendant outlined his potential legal options and identified his attorney by name. *Id.* Dr. O’Brien described Defendant as “interactive, sociable, communicative, and demonstrated an intact ability to listen to, comprehend, and respond appropriately to questions posed to him.” *Id.* at 18. Additionally, Dr. O’Brien concluded Defendant did not “exhibit any impairment in his ability to communicate reasonably, rationally, and responsively to his attorney.” *Id.*

Based on this, Dr. O’Brien reached the same diagnosis of Autism Spectrum Disorder, which does not manifest itself other than in “subtle motoric behaviors.” *Id.* As for his symptoms of psychosis, Dr. O’Brien believes Defendant only experiences these during moments of meditation and therefore does not diagnose him with schizophrenia as Dr. Voskanian had. *Id.* at 19. Dr. O’Brien also testified at the hearing on August 30, 2018, and maintained his opinion although he did not again interview Defendant. During testimony, Dr. O’Brien talked about Defendant’s belief of having another life and believes Defendant cannot separate television shows and video games from reality, but again states these delusions only occur during periods of meditation. Defendant told Dr. O’Brien that he met with a personal trainer regularly, is very spiritual, meditates regularly, and met with a psychic weekly. Dr.

O'Brien finds the presence of rationality due to his exculpatory statements. Unlike Dr. Voskanian, Dr. O'Brien finds that Defendant's defense of no fingerprints and stating that he told police he killed Victim, not because it was the truth but because he was scared, shows his ability to rationally think and assist in his defense. Dr. O'Brien agrees that Defendant has severe and long-term autism, but does not agree that he cannot rationally assist in his defense due to this.

***Dr. John Northrop's Report***

Dr. Northrop filed his report in response to this Court's order on July 9, 2017, following an interview with Defendant on July 7, 2017. The report is based off of an interview that was approximately one and a half (1 ½) hours and multiple documents outlining this incident and Defendant's history. Dr. Northrop Evaluation's 09/09/17, at 1. During Dr. Northrop's interview Defendant revealed the following: Defendant stated he went to private school where he was in special education classes due to his autism diagnosis; His mother and father divorced when he was in junior high and his stepfather abused him; He attended Northern Virginia Community College where he studied for a few semesters but stopped due to dropping grades; and He had trouble keeping a job and was not in a romantic relationship, but stated he dated women in the past. *Id.* at 2.

Defendant told Dr. Northrop when he was first diagnosed with autism he would "get overstimulated and confused especially if more than one person [was] talking. [He's] impulsive and slow with a poor memory." *Id.* at 3. In the past, Defendant recalled feeling depressed three or four times a month. *Id.* at 4. He also told Dr. Northrop he struggled with social interactions. *Id.* Dr. Northrop also described what he believed to either be "psychosis or eccentric notions of someone with an autism spectrum disorder or personality disorder." *Id.*

Defendant believed himself an empath (he could feel other's emotions) that could feel the hatred from Washington D.C. following the election. *Id.* He also encountered spirit guides and alien life. *Id.* But he denied experiencing these things when not meditating with his YouTube videos. *Id.* Defendant stated he had experienced voices stating "Hail Satan," "Just give up," and "Depression" that he described as "thought forms." *Id.*

At the time of the interview, Dr. Northrop relayed Defendant still heard unfamiliar voices, but stated the medication was helping with this issue. *Id.* at 5. Defendant also denied any "contact" with aliens or spirit guides since incarceration, but still believes he has the ability to do so through meditation. *Id.* at 5, 7. Upon initial incarceration, Defendant had "suicidal ideations conditional on a life sentence" since he was aware that he is charged with homicide, but he has since denied this and maintains his innocence. *Id.* at 6.

Dr. Northrop observes that his anxiousness and oddities were consistent with a psychotic disorder, pervasive developmental disorder, and/or personality disorder. *Id.* at 7. Dr. Northrop reached the same conclusion as the other evaluators. Defendant understands the factual nature of the proceedings such as what he is charged with, that it is serious, the procedures and persons involved, and he can define their roles and define guilt. *Id.* at 7-8. Defendant explained to Dr. Northrop his options regarding whether to plea or go to trial. *Id.* at 8. Dr. Northrop reached the diagnosis that he has an "Unspecified Psychotic Disorder -- Evaluate for Schizophrenia vs. Autism Spectrum Disorder vs. Personality Disorder." *Id.* at 11. Further Dr. Northrop concluded:

Nonetheless, at the present time he does not have any psychiatric symptoms, psychosis or cognitive deficits that are substantially impairing his capacity for legal proceedings. As described above, he has a sufficient rational and factual understanding of the proceedings against him. He is capable of assisting his attorney in his defense. His bizarre ideas or delusions do not directly impact upon his capacity for legal proceedings.

*Id.*

## **Discussion**

When a defendant “is found to be substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense, he shall be deemed incompetent to be tried, convicted or sentenced so long as such incapacity continues.” 50 P.S. § 7402(a). A defendant is presumed competent and it is their burden to prove otherwise. *Commonwealth v. Sanchez*, 907 A.2d 47, 490 (Pa. 2006). At a hearing on the issue, incompetency must be proven by a preponderance of the evidence. 50 P.S. § 7402(d). That is to say Defendant must prove that more likely than not he is incompetent. *Commonwealth v. Hughes*, 865 A.2d 761, 779 (Pa. 2004). “Competency is measured according to whether the defendant has sufficient ability at the pertinent time to consult with counsel with a reasonable degree of rational understanding, and to have a rational as well as a factual understanding of the proceedings.” *Commonwealth v. Davido*, 106 A.3d 611, 639 (Pa. 2014) (citing *Commonwealth v. Uderra*, 862 A.2d 74, 88 (Pa. 2004)). A long history of mental illness is not dispositive of Defendant’s ability to stand for trial. *See Commonwealth v. Tyson*, 402 A.2d 995 (Pa. 1979).

## **Analysis**

All three experts agree that Defendant has the requisite capacity to understand the factual nature of his criminal proceedings. This is demonstrated by his understanding of the roles of the prosecution, judge, jury, defense attorney, and his personal role in the proceedings. In addition, he understands the seriousness of the offense for which he is charged, his role as the defendant, and his options moving forward. The question and disagreement among the experts is Defendant’s rational understanding and more specifically



his ability to assist his attorney in his defense. *See* Dr. Voskanian's Evaluation 10/17/17, at 33.

Defendant has the burden to prove more likely than not that he is incompetent. *Hughes*, 865 A.2d at 779. He has not met that burden. Both Dr. Northrop and Dr. O'Brien concluded that Defendant was capable of adequately assisting his attorney in his own defense. One sign of his competency that stuck out to the Court was the consistency with which he detailed the incident to all three evaluators. In each account, although almost a year apart, he recounts: leaving for Canada to get a fresh start, riding his bike to Williamsport, being tired, exhausted, and hungry, breaking a window with a shovel to enter a home that he thought was abandoned, finding a dead body inside, before leaving taking coins because he needed them, and then taking the car outside to finish his trip to Canada. Dr. Voskanian's Evaluation 10/17/17, at 11; Dr. O'Brien's Evaluation 08/20/18, at 18; Dr. Northrop's Evaluation 09/09/17, at 13-14. One of Dr. Voskanian's original concerns was Defendant's anxiety and rigidity during their interview, but at the hearing Dr. Voskanian stated that the medication did make him more complacent and easier to have a conversation with. *See* Dr. Voskanian's Evaluation 10/17/17, at 10. In addition, Dr. Voskanian stated that Defendant was "highly suggestible" which meant he would not be able to keep to one version of events, but based on the version of events he has stated thus far it has not been a problem. *Id.* Also during testimony Dr. Voskanian contradicted this point by stating Defendant will not let go of this idea that his fingerprints are not on the shovel, therefore he cannot be convicted. If he was as highly suggestible as Dr. Voskanian states then this would not be the case. Dr. Voskanian also states that his strong belief that he cannot be prosecuted due to a lack of fingerprints shows

his lack of rational competency, but this Court disagrees. Regardless of whether this is a poor defense or not, it is still a rational defense.

More evidence of his rational competency is demonstrated in his reasoning for why he gave an alleged confession to police officers. Defendant stated he “had a mental breakdown” and he “told them what they wanted to hear.” Dr. Voskanian’s Evaluation 10/17/17, at 8. This was due to the fact he was “exhausted, tired, hungry,” and not thinking. *Id.* Whether true or false, this shows rational competency of a common confession defense. The Court also finds the fact that he lived on his own and took care of himself for an extended period of time prior to the incident, as well as the fact he recounted his history to all three evaluators in a similar fashion without any major alterations shows evidence of competency.

The most important and troubling information presented is Defendant’s potential moments of psychosis. This includes his beliefs about his “twin flame,” his belief he was a “fire breathing dragon,” ability to see past lives, and him being an empath. *Id.* at 5-6, 10. Dr. Voskanian views this phenomena as a slipping back and forth from reality to reality, which would seriously impair Defendant’s competency in dealing with rational aspects of his defense. Dr. O’Brien identified this as “evidence of psychosis” that was only experienced “during periods of daily meditation.” Dr. O’Brien’s Evaluation 08/20/18, at 19. He does not deny the validity of Defendant’s beliefs or that they are not prevalent just that they would not affect the legal proceedings because he has not experienced them since his period of incarceration and they only occur during periods of meditation. Dr. Northrop also finds evidence of psychosis that could be associated with schizophrenia as did Dr. Voskanian, but like Dr. O’Brien he finds that “[h]is bizarre ideas or delusions do not directly impact upon his capacity for legal proceedings.” Dr. Northrop’s Evaluation 09/09/17, at 13-14. Through his

investigation, he found meditation to also be the root or trigger of much of his psychosis. *Id.* at 4.

**Conclusion**

Based upon the testimony of Dr. Voskanian and Dr. O'Brien, as well as their reports in addition to Dr. Northrop's report, this Court finds that Defendant has not met his burden to show his incompetence. Defendant specifically has not proven by a preponderance of the evidence that the psychosis which would hinder his defense occurs at times other than when he is meditating. Since Defendant is presumed competent and a long history of mental illness is not dispositive of his ability to stand trial, Defendant is found competent to stand trial for the charges being brought by the Commonwealth.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of October, 2018, based upon the foregoing Opinion, the Defendant's Omnibus Pretrial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
Robert Hoffa, Esquire