

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

VINNIE ADAMS,

Respondent.

Electronically Filed
Apr 01 2021 04:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 81782

APPELLANT'S OPENING BRIEF

**Appeal From Amended Decision and Order
Eighth Judicial District Court, Clark County**

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JURISDICTIONAL STATEMENT

NRS 117.015(1)(b) provides that the State or the defendant may file an appeal “to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from an order of the district court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.”

On August 20, 2020, the district court entered and filed its Amended Decision and Order finding Vinnie Adams (“Adams”) incompetent without the possibility of restoration and dismissing his charges without prejudice. The State filed its Notice of Appeal on September 9, 2020.

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ROUTING STATEMENT

This appeal is appropriately retained by the Supreme Court pursuant to NRAP 17(a)(14) because it raises a principal issue of a question of first impression and statewide public importance.

STATEMENT OF THE ISSUE

1. Whether the district court abused its discretion when it applied a heightened standard to determine competency that resulted in a finding that the defendant was incompetent without the possibility of restoration and thereby dismissed his criminal case.

STATEMENT OF THE CASE

On October 19, 2018, Vinnie Adams (hereinafter “Adams”) was charged by way of Criminal Complaint with one count of Child Abuse, Neglect, or Endangerment Resulting in Substantial Bodily or Mental Harm (Category B Felony – NRS 200.508.1). I AA 2. On February 7, 2019, Dr. Sharon Jones-Forrester, a psychologist hired by Adams, conducted a neuropsychological evaluation of Adams. I AA 10. On August 1, 2019, Adams’ case was bound over to the district court for a Competency Evaluation. I AA 24. A Commitment and Order was filed on August 8, 2019. I AA 25.

On August 13, 2019, Dr. John Paglini, a licensed psychologist, interviewed Adams at the Clark County Detention Center and concluded that Adams was not competent. I AA 26. Six (6) days later, on August 19, 2019, Dr. Sunshine Collins,

also a licensed psychologist, interviewed Adams and found that he was not competent to stand trial. I AA 31. Accordingly, on August 23, 2019, the district court found Adams not competent and, pursuant to NRS 178.425, remanded Adams to the custody of the Administrator of the Division of Mental Health Development Services for the Department of Human Resources for detention and treatment at a secure facility until his competency had been established. I AA 39-41. The district court further noted that once Adams' competency had been established, he was to return to the district court for further proceedings. I AA 42.

Adams was sent to Stein Forensic Facility (hereinafter "Stein") and began his treatment and restoration of competency on September 5, 2019. I AA 63. While undergoing competency restoration at Stein, two (2) licensed psychologists, Dr. Sarah Damas and Dr. Lia Roley, as well as one (1) senior psychiatrist, Dr. Rami Abukamil, evaluated Adams. I AA 45-66. All three (3) individuals ultimately concluded that Adams was competent to stand trial. I AA 50, 59, 66. Based on these findings, the district court, on December 23, 2019, filed an Order to Transport Adams back to the Clark County Detention Center for further proceedings. I AA 68-69.

Subsequently, on December 27, 2019, Adams requested a continuance to allow Dr. Damas, Dr. Roley, and Dr. Abukamil the opportunity to review Dr. Jones-

Forrester's neuropsychological evaluation report. I AA 70. Adams requested several additional continuances awaiting a response from the aforementioned evaluators. I AA 71, 74. On February 21, 2019, Adams informed the district court that the Stein evaluators subsequent review of Dr. Jones-Forrester's neuropsychological evaluation report did not change their opinions, so he requested a challenge hearing be set. I AA 75.

On July 17, 2020, the district court conducted a challenge hearing wherein Dr. Aubkamil, Dr. Roley, Dr. Damas, and Dr. Jones-Forrester testified. I AA 98. On August 13, 2020, the district court filed a Decision and Order and found Adams not competent pursuant to Dusky v. U.S., 362 U.S. 402 (1960). I AA 185-89. A week later, on August 20, 2020, the district court filed an Amended Decision and Order and found that while Adams understood the nature of the charges against him, his intellectual and neurocognitive deficits rendered Adams incompetent without the possibility of restoration, despite evidence that Adams could be competent for future proceedings. I AA 193-99. Thereafter, Adams' charges were dismissed without prejudice and he was released from custody on his own recognizance. I AA 198, 203. On August 25, 2020, the district court filed Findings of Incompetency and Order for Civil Commitment or Release. I AA 207-09. The State filed a Notice of Appeal on September 9, 2020. I AA 210-11.

STATEMENT OF THE FACTS

On or about October 17, 2018, Adams picked up and shook his daughter, L.Z., which resulted in substantial bodily harm. I AA 2. While the underlying facts of this case are indeed important to keep in mind, the State has elected to include a synopsis of each of the relevant medical reports and challenge hearing testimony which are imperative to this Court's review of the district court's decision. I AA 10-19, 45-66, 98-180.

A. MEDICAL REPORTS

1. Dr. Sharon Jones-Forrester's Neuropsychological Evaluation Report

Dr. Sharon Jones-Forrester was the initial psychologist hired by Adams to perform a neuropsychological evaluation. I AA 10. Prior to his admission to the Stein Forensic Facility for competency restoration, Dr. Jones-Forrester conducted a neuropsychological evaluation (hereinafter "February 2019 evaluation") of Adams on February 7, 2019 and provided her findings in an evaluation report she drafted on March 13, 2019. I AA 10. At the beginning of her report, Dr. Jones-Forrester provided that the purpose of the evaluation was to examine Adams' intellectual, neurocognitive, and psychological functioning in depth as opposed to only addressing competency. I AA 10.

It was Dr. Jones-Forrester's opinion that Adams had an intellectual disability, very poor comprehension skills, and struggled with understanding complex legal information. I AA 10. She further opined that Adams read at the K.7 grade level, had low literacy, significant learning disabilities, and was unable to understand written information. I AA 10.

Dr. Jones-Forrester also noted in her report that Adams had a good relationship with his attorney, was comfortable admitting when he did not understand information, and was willing to ask for clarification and repetition of that information. I AA 10. Notwithstanding, Dr. Jones-Forrester found that because Adams suffered from an intellectual disability, he struggled with identifying the consequences of misunderstanding information and being able to properly advocate for himself when he was unsure. I AA 10.

With regard to competency, Dr. Jones-Forrester found that Adams could explain some of his charges in depth, but had only a concrete and rudimentary understanding of sentencing issues. I AA 10. Further, while Adams understood the roles played by the legal community, he misunderstood the function of the jury and did not understand his role to assist counsel. I AA 10. Adams also demonstrated that he understood court proceedings but was unable to articulate what he would do if he disagreed with something said in court. I AA 10. Dr. Jones-Forrester further opined

that his intellectual disability, learning disabilities, and neurocognitive defects affected his ability to understand and process information under stressful conditions. I AA 10. Dr. Jones-Forrester also stated that Adams “tends to be gullible and easily manipulated, [had] extremely low processing, has poor expressive and receptive language skills, and [would] significantly struggle with reasoning, problem-solving, and thinking through the consequences of his actions and responses,” which could result in him agreeing to information he has clearly misunderstood. I AA 10. She claimed that this would be more likely to happen in stressful situations or when Adams received information in a rapid manner. I AA 10. It was highly likely that his deficits would impact his ability to understand legal information and the legal consequences of his actions and decisions with a reasonable degree of factual and rational understanding. I AA 10-11.

Dr. Jones-Forrester also opined that Adams’ intellectual disability and neurocognitive deficit were likely lifelong and not amenable to restoration. I AA 11. However, she noted that Adams may potentially be amenable to improvement through education, but such improvement would be limited by his intellectual disabilities. I AA 11. Specifically, she found that Adams had extremely low literacy and numeracy as he had no formal education. I AA 15. She also noted that throughout his life he needed assistance with making day-to-day decisions. I AA 16.

Overall, Dr. Jones-Forrester diagnosed Adams with Moderate Intellectual Disability, Unspecified Major Neurocognitive Disorder, Specific Learning Disorder with Impairment in Reading, Mathematics, and Written Expression. I AA 19. Moreover, she concluded that his moderate intellectual disability, severe learning disabilities and functional illiteracy, attention and processing speed deficits, expressive and receptive language skill deficits as well as spatial skill deficits, memory deficits, and executive functioning deficits would all “negatively impact his ability to have a clear factual and rational understanding of information related to his case and court proceedings and his ability to participate in his defense with a reasonable and rational degree of understanding.” I AA 18.

At the end of her report, Dr. Jones-Forrester reiterated that the sole purpose of the evaluation was to evaluate Adams’ neurocognitive functioning rather than solely address competency, but she believed his disabilities, disorder, and deficits could impact his competency across many neurocognitive domains. I AA 18.

2. Dr. Sarah Damas’ Report

On December 11, 2019, Dr. Sarah Damas evaluated Adams during his competency restoration treatment at the Stein Forensic Facility and drafted a report on December 17, 2019. I AA 60. In her report, Dr. Damas noted that she reviewed Adams’ legal records, pre-commitment competency evaluations from Dr. Sharles P.

Colosimo, Dr. John Paglini, Dr. Collins, Adams' CCDC medical records, as well as Adams' Division of Public and Behavior Health Medical and Mental Health Records. I AA 63. She also summarized what Stein personnel noted while observing Adams while he was admitted to Stein. I AA 63.

Notably, Dr. Damas found that, on September 13, 2019, Adams scored a twenty-six (26) percent on a test of legal knowledge. I AA 63. However, she also explained that a note from a psychiatric caseworker that had been observing Adams provided: "it appears that if Vinnie doesn't want to respond he will respond with 'I don't know.'" I AA 63. Further, he uses distractors such as Mickey Mouse "to avoid responding to something he doesn't want to answer." Pg. 4. She also wrote that if Adams is asked to think about "what you're asking him" or is offered "prompting/leading words," he will respond. I AA 64.

Dr. Damas also noted in her report that, on November 13, 2019, Dr. Vince Brouwers indicated that Adams correctly named his charge, sentencing range, and accurately defined a plea bargain. I AA 64. Dr. Brouwers noted that Adams stated he would consider a plea bargain but would have to talk to his "PD" before he made a choice. I AA 64. Dr. Brouwers described Adams as "friendly with bright affect and linear thoughts." I AA 64. He added there were no signs of mental illness and he appeared motivated to proceed with his case. I AA 64. Likewise, Dr. Damas

reported, that Dr. Patrick Bennet, in December 2019, had noted that Adams was able to state his charges and pertinent info about his case. I AA 64.

Dr. Damas also outlined her own observations about Adams' competency, pursuant to Dusky and NRS 178.400, during her evaluation with Adams. I AA 64-65. Specifically, she noted that Adams identified his charge as "child abuse and neglect," which he identified as a felony. I AA 65. Adams stated a felony charge carries up to a life sentence. I AA 65. Moreover, while he incorrectly stated that a misdemeanor conviction could result in probably a year of incarceration, he indicated he could receive one (1) to twenty (20) years if he was convicted. I AA 65. He provided a rational description of the accusations against him and indicated he has a no contact order to stay away from his girlfriend and the victim. I AA 65.

Further, Adams identified as the "defendant." I AA 65. He explained that his attorney's role was to help him discuss his case and that he was on his side. I AA 65. According to Adams, the State's role was to put him in prison. I AA 65. He further explained that it is the judge's role to sentence, is probably on both sides, and the jury is the entity that determines guilt or innocence. I AA 65. Additionally, he understood that money and fingerprints could be used as evidence and that evidence as well as witnesses could be for or against the defendant. I AA 65.

Adams also listed guilty, not guilty, “reason of insanity,” and no contest as the types of available pleas. I AA 65. While he needed further education for a no contest plea, he was able to explain that to plead guilty means “you did it” and “you go to prison,” whereas a plea of guilty means “you didn’t do it” and is followed by a trial. I AA 65. Adams indicated that the benefit of a plea bargain is less time and dropped charges, and that a defendant must plead guilty, or, with minimal prompting, no contest to accept a plea deal. I AA 65. He indicated that the defendant gives up the right to remain silent and does get to go to trial when he accepts a plea bargain. I AA 65.

Moreover, Adams identified his attorney and reported no issues working with his attorney. I AA 65. When asked how he could help counsel he said he would share everything with his counsel. I AA 65. Adams explained that while a defendant should “be quiet” in the courtroom and could only speak when the judge permitted, he would whisper to his counsel if he had a question during the court process or if a witness lied. I AA 65.

Ultimately, Dr. Damas concluded that while Adams had an intellectual disability, his cognitive impairments did not affect his competency. I AA 66. Further, Adams demonstrated “a basic yet but factual understanding of his charges and potential sentencing.” I AA 66. Adams also “provided correct responses to most of

the legal process questions and demonstrated an understanding of the roles of legal participants and courtroom procedures.” I AA 66. Finally, he reported that he was willing to assist and communicate with his attorney. I AA 66. In conclusion, Dr. Damas found that Adams was competent pursuant to NRS 178.400 and Dusky. I AA 66.

3. Dr. Lia Roley’s Report

On December 11, 2019, Dr. Lia Roley also evaluated Adams during his competency restoration treatment at the Stein Forensic Facility and drafted her own report on December 16, 2019. I AA 52. Dr. Roley also reviewed Adams’ legal records, previous competency evaluations, CCDC medical records, as well as the Division of Public and Behavioral Health Medical and Mental Health Records. I AA 52. Dr. Roley also provided a summary of Stein personnel observations of Adams while at Stein. I AA 55-56. Notably, Dr. Roley mentioned that on October 15, 2019, Adams met with his treatment team and discussed flies on leashes that came from the FBI. I AA 56. He then discussed flies turning into German Shepherds. I AA 56. However, after leaving the team, the forensic specialist shared that Adams discussed visiting strip clubs and conversed normally with peers and staff on the unit. I AA 56.

Moreover, Dr. Roley noted that, as of November 5, 2019, Stein personnel had observed Adams attending competency restoration groups more often and had

significantly improved in his learning of legal terms and the roles of the courtroom. I AA 56. Further, he demonstrated he understood plea options, penalties associated with his charge, and that a verdict at trial could be decided on evidence. I AA 56.

Dr. Roley also noted her own observations during her evaluation of Adams. I AA 57-58. During this evaluation, Adams stated his charge was child endangerment, and he could receive two (2) to twenty (20) years in prison. I AA 57. While Dr. Roley had to remind him of the level of the charge, he was able to relay that information back to her later in the evaluation. I AA 57. When asked to provide the length for a misdemeanor charge he responded one (1) year, but after being educated that that was the length of sentencing for a gross misdemeanor charge, he stated that the length of sentencing for a misdemeanor was five (5) or six (6) months. I AA 57. Adams was also able to provide the definition of probation and explained that under probation he would be out of custody and would have rules to follow. I AA 57.

Adams further described the roles of various courtroom officials. I AA 57-58. Specifically, he described the judge as the individual who oversees the case and sentences. I AA 57-58. The State was described as someone who gives prison time. I AA 57-58. He described defense counsel as the individual that would help him “get the best deal possible” and would “tell the judge [his] side of the story.” I AA 58.

Adams also provided examples of evidence that could be used. I AA 58. As

far as speaking with his attorney about his case, Adams told Dr. Roley that he would discuss with his attorney any plea the State offered. I AA 58. His understanding was that if he took the deal, his charges would be less, but he would have to give up certain rights. I AA 58. Ultimately, he stated he could help his attorney in his defense by telling his attorney everything, would discuss disagreements he had with counsel, and, most importantly, he would ask his attorney if something was said in court that he did not understand. I AA 58. Moreover, Adams indicated that while in court he would keep quiet, but whisper to his attorney so he would not be too loud and asked to leave the courtroom. I AA 58.

Additionally, Dr. Roley presented a hypothetical crime scene scenario and asked whether Adams would take the plea bargain or take the case to trial. I AA 58. Adams indicated that, under the scenario presented, the defendant should take the plea bargain based on the amount of evidence in the case and the defendant would likely be found guilty if he or she took the case to trial. I AA 58. Adams further explained that the risk of going to trial was that if one loses, one gets the max penalty. I AA 58. Adams further indicated that evidence and witnesses would be presented at the trial to aid in determining Adams' guilt or innocence. I AA 58.

In conclusion, Dr. Roley explained that while Adams initially did not frequently attend competency restoration groups and would respond that he did not

know when asked questions about his charges, through subsequent interactions, Adams would reveal that he knew more information than what he was providing. I AA 59. Ultimately, she found that while he was suspected to have some cognitive impairments and collateral reports indicate that he may have been exposed to drugs/alcohol in utero, he put forth a poor effort when relaying his legal knowledge. I AA 59. Dr. Roley explained that while Adams had been provisionally diagnosed with Other Specified Neurodevelopmental Disorder associated with prenatal illicit drug/alcohol exposure, his limitations did not impact his competency to stand trial. I AA 59. Accordingly, Dr. Roley found that, pursuant to NRS 178.400 and the Dusky standard, Adams was competent. I AA 59.

4. Dr. Rami Abukamil's Report

Dr. Rami Abukamil oversaw Adams' care at Stein beginning on September 21, 2019. I AA 47. In his report, Dr. Abukamil explained that when he met with Adams, Adams had expressed concern about going to prison because he had learned in his competency restoration classes that a felony could result in one (1) to twenty (20) years in prison. I AA 47. However, Adams also told Dr. Abukamil that he received a plea deal with the first offer being six (6) to (15) years and that his lawyer said that would be six (6) Christmases. I AA 47.

Dr. Abukamil also notably mentioned that Adams completed a Georgia Court Competency Test-1992 Revision (GCCT), which assesses a defendant's knowledge of basic courtroom layout, functions of courtroom participants, knowledge of his current charge, and his relationship to the defense attorney. I AA 48. While most defendants that are found competent score above a seventy (70) out of one hundred (100), Adams scored eighty-four (84) out of one hundred (100). I AA 48. Indeed, Adams explained that a plea deal was "like lower the sentence. You plead guilty for some time off." I AA 49. He said there is a benefit to it because it could reduce time, but he also heard people can take it to trial and win. I AA 49. When asked how a judge might decide if a defendant loses or wins at trial, he replied evidence. I AA 49.

Moreover, Dr. Abukamil asked Adams which factors he would consider when accepting a plea deal, to which he replied that he would consider the following: what was happening in court, the length of the sentence, and whether the State would reduce the term of years. I AA 49. He added that by taking the case to trial he might be taking a gamble and his case was serious because it was "messing with [his] life" as he could lose and face the max penalty. I AA 49. Adams also explained that if the court asked him whether he did it or not he could say yes or no, and, after explaining, Adams recalled the meanings of guilty and not guilty from legal process classes at

Stein, but he did not know what a no contest plea was. I AA 50. Adams understood that pleading meant he would not fight the charges, but the Court would blame him. I AA 50.

Ultimately, using the Dusky standard, Dr. Abukamil found that Adams: (1) understood the charges against him because he knew he faced a felony and understood the possible punishment associated with the charge, (2) understood the nature and purpose of the court proceedings as he could identify the roles of the parties as well as the jury and witnesses, (3) was able to assist counsel in preparing his defense with rational understanding because he described a positive relationship with his attorney in order to achieve a favorable outcome, and (4) he was able to weigh the advantages and disadvantages of entering a plea versus going to trial, including the evidence against him. I AA 50-51. Additionally, he noted that while Adams still experienced cognitive defects, Dr. Abukamil met with him on several occasions to review the materials. I AA 51. While reviewing, Dr. Abukamil used simple terms as well as visual aids and Adams followed his efforts. I AA 51. Thus, Dr. Abukamil found that with appropriate guidance and support Adams could participate in his legal proceedings. I AA 51.

5. Dr. Sharon Jones-Forrester's Addendum Report

On May 19, 2020, Dr. Jones-Forrester conducted an additional evaluation with Adams. I AA 87. This evaluation consisted of a one (1) and a half hour meeting with Adams, Adams' counsel, and his social worker. I AA 89. She observed interactions between Adams and his counsel. I AA 89.

During this evaluation, Dr. Jones-Forrester found that Adams demonstrated a factual understanding of the charges against him sufficient to satisfy the Dusky standard and NRS 178.400, but “had difficulty with accurately recalling timelines and case facts may continue to undermine his rational understanding of these matters and ability to effectively assist counsel in his defense.” I AA 89. For instance, Adams appeared to be confused about the role of legal professionals as well as the proceedings. I AA 90. However, he was able to identify that the role of his counsel was to defend him and help him obtain the best deal. I AA 90. Further, he explained that the role of the District Attorney was to find him guilty or not guilty but could also speak to the judge as well as the defense and ensure Adams would lose his case. I AA 90. Dr. Jones-Forrester further found that while Adams could state that it was within the province of the jury to determine innocence or guilt, he was unable to differentiate between the role of the judge and the jury. I AA 90.

Additionally, Adams emphasized that it was important for him to be open with his attorney and share everything with him. I AA 90. Yet, Dr. Jones-Forrester opined

that Adams struggled with understanding communication when he disagreed with his attorney. I AA 90. Based on her report, Adams expressed that when faced with a disagreement, Adams did not wish to make his attorney mad and harm their friendship. I AA 90.

With regard to sentencing structure and negotiations, Dr. Jones-Forrester found that Adams had a minimal understanding when counsel explained sentencing ranges and stated he could get probation if he told the judge he was sorry. I AA 90. Yet, she found that Adams was able to identify his sentencing range. I AA 90. Dr. Jones-Forrester then generally noted that when Adams was asked what a good deal would be, he stated probation, but could not rationally consider other options. I AA 90. She also shared her concern that when asked who makes a plea deal, Adams responded, the District Attorney, but was unable to further clarify. I AA 90. However, after further education from his counsel, Adams was able to identify that it was ultimately his choice whether to accept a plea deal. I AA 90. Dr. Jones-Forrester also expressed concern when Adams could not provide explanation for his answers to certain legal questions. I AA 90.

With regard to his ability to remember and relate back advice of counsel, Dr. Jones-Forrester found that Adams also demonstrated difficulty. I AA 91. First, he had issues with recalling how many times he had seen counsel or what advice his

counsel had previously given him. I AA 91. The only advice he could recall was, “don’t talk to nobody else” and that attorney client privilege meant he could not share information with other people. I AA 91. Ultimately, due to these difficulties, Dr. Jones-Forrester found that Adams could not effectively assist counsel with a reasonable degree of factual and rational understanding. I AA 91.

Dr. Jones-Forrester further found that while Adams had a minimal understanding of trial, he had a poor rational understanding of the matters and seemed confused. I AA 91. Specifically, regarding his ability to weigh the possible outcomes of going to trial and to weigh the merits of the evidence as well as witnesses against him, she found that he demonstrated poor insight and limited understanding. I AA 91. Adams repeatedly responded that he did not know, probably, or probably not when answering questions related to trial. I AA 91. Importantly, when he was asked who made the decision to go to trial, Adams responded the judge, but then with prompting from counsel, he was able to accurately state that Adams would make that decision. I AA 91. Further, he was able to explain what would happen if he won at trial or lost at trial. I AA 91. He was able to provide a concrete and accurate response to the State’s burden at trial. I AA 91. When asked if anyone could force him to testify, he said probably not. I AA 91. Finally, when counsel asked Adams about the risks of going to trial, he claimed he

did not know, but then when asked more concretely to estimate his odds, he was able to say that he was 90% sure he would lose. I AA 91.

Dr. Jones-Forrester also expressed her concern with Adams' understanding of the adversarial nature of the legal process. I AA 91. Adams claimed that if he was asked difficult or challenging questions at trial, he would probably just sit there. I AA 91. He also expressed that he had anxiety about trial and was concerned with making people unhappy. I AA 91. He then discussed when people acted sternly toward him, he would do nothing. I AA 91.

Additionally, when Adams was asked about his understanding of competency, he explained that competent meant if he went to court. I AA 92. According to Dr. Jones-Forrester, Adams demonstrated low insight into the extent of his intellectual and neurocognitive disabilities, which would limit his ability to retain information from his competency restoration program. I AA 92.

Ultimately, Dr. Jones-Forrester found that Adams could not satisfy the second—a rational factual understanding of court proceedings—and third—the ability to aid and assist counsel in his defense with a reasonable degree of rational understanding—prongs of the Dusky standard. I AA 92. She further opined in this report that because of Adams' lifelong intellectual disability and significant

neurocognitive deficits, she did not think he would be amenable to restoration. I AA 93.

B. CHALLENGE HEARING TESTIMONY

1. Dr. Sharon Jones-Forrester's Testimony

Dr. Jones-Forrester testified at the challenge hearing on July 17, 2020. I AA 101. At the hearing she discussed how she conducted a neuropsychological evaluation of Adams on February 7, 2019, the February 2019 evaluation, and a subsequent evaluation to observe Adams' interactions with his attorney on May 19, 2020 (hereinafter "May 2020 evaluation"). I AA 102. Ultimately, however, Dr. Jones-Forrester testified that she only observed Adams on these two (2) occasions. I AA 123.

Dr. Jones-Forrester found at Adams' February 2019 evaluation that he had an extremely low IQ score of fifty-eight (58) as compared with a normal IQ score of about one hundred (100). I AA 103. The testing also revealed that he had low academic skills, difficulties with regard to attention, mental tracking, processing speed, language and spatial skills, as well as memory and executive skills. I AA 104-105. Dr. Jones-Forrester opined that such low scores would mean that Adams was susceptible to missing and misunderstanding information. I AA 105. The results of the language skills analysis showed that Adams had a very low vocabulary. I AA

105. She further explained that Adams had a hard time generating rapid, well thought out responses to questions and understanding abstract concepts, which could result in misunderstanding. I AA 105. Further, she found that Adams scored low in executive control skills, which account for reasoning, planning, impulse control, and problem solving. I AA 106. She stated that this effected Adams' ability to reason, think through consequences, engage in problem solving, and manage impulsivity. I AA 106-07.

Additionally, Dr. Jones-Forrester also observed Adams with his attorney as well as Adams' social worker to observe his understanding of legal information. I AA 107. She filed an amended report because of the issues she found with Adams' competency during the May 2020 evaluation. I AA 108. During this evaluation, she noticed that Adams struggled with hypothetical reasoning with legal concepts. I AA 109.

Next, she explained that Adams had difficulties with understanding roles of the legal community and court proceedings. I AA 110. To her it seemed that Adams saw his relationship with his attorney as a friendship. I AA 110. Additionally, Adams struggled at times with understanding the role of the prosecution, the judge, and the jury. I AA 110. Moreover, at times he did not understand the adversarial nature of the process and she was concerned with his tendency to state, "I don't know." I AA

110-11. She ultimately opined that Adams’ understanding of court proceedings and its adversarial nature would be a significant barrier to satisfying the Dusky standard. I AA 112.

Further, Dr. Jones-Forrester shared concerns regarding Adams’ difficulties understanding sentencing and negotiations. I AA 112. Specifically, she claimed that he had no retention of advice beyond very concrete principles. I AA 113. Adams also struggled with the possible outcomes of going to trial, including weighing whether to go to trial and who would make the ultimate decision of whether to go to trial. I AA 114.

Dr. Jones-Forrester also discussed the effects of the Stein restoration program on Adams. I AA 115. She opined that Adams had difficulty retaining the information he learned at Stein because he stated he learned about “court and stuff.” I AA 115. She stated that based on Adams’ response, it seemed that he understood what was happening with his case, but did not understand competency as it relates to his legal knowledge and understanding. I AA 115. Yet, she conceded that with significant support and probing, Adams was able to understand that competency is whether he will or will not face charges. I AA 115.

Further, Dr. Jones-Forrester opined that while she believed that the Stein program was careful in examining Adams, she thought the Stein evaluations were

lacking because the physicians did not conduct a direct observation with counsel, which would have been critical to understanding his competency. I AA 121. Also, she was concerned that they did not take into account his retention of information learned in May when Dr. Jones-Forrester observed Adams with counsel. I AA 121.

Ultimately, Dr. Jones-Forrester found that Adams demonstrated deficits above what is generally seen in individuals with his level of intellectual functioning. I AA 119. She diagnosed him with moderate intellectual disability, unspecified major neurocognitive disorder, and specific learning disabilities. I AA 121-22. She further opined that he may have had alcohol and polysubstance exposure in utero but could not confirm. I AA 121-22. In conclusion, Dr. Jones-Forrester believed that while Adams understood the nature of the charges against him, he would not be amenable to restoration because while his learning disabilities could be improved with training, his restoration would be limited based on his low IQ and neurocognitive defects. I AA 122.

2. Dr. Rami Abukamil's Testimony

Dr. Abukamil testified that he was assigned to Adams' case for his first two (2) months at Stein and met with him about fifteen (15) times during Adams' individual therapy and an equal number of times during his team therapy. I AA 129-131. In addition to those meetings, Dr. Abukamil conducted a formal competency

evaluation of Adams for one (1) hour, but his findings were based on that one (1) hour, his prior interactions with Adams, and Adams' Stein records. I AA 131. Dr. Abukamil also testified that he was aware that Adams was being treated for his intellectual deficits. I AA 133.

Utilizing the Dusky standard, Dr. Abukamil found that Adams: (1) had the sufficient ability to consult with counsel with a reasonable degree of rational understanding, (2) understood the nature and purpose of court proceedings, (3) understood his own position in the proceedings as the accused, (4) understood the role of his counsel in those proceedings, (5) understood the role of other members of the proceedings such as the judge, the prosecutor, the jury, and the witnesses, (6) understood the nature of the criminal charges against him, (7) understood the possible outcomes or verdicts in the case, and (8) understood the range of punishments he could face. I AA 133.

Further, he noted that he agreed with some of Dr. Jones-Forrester's findings. I AA 133. However, although he agreed that Adams would have problems with memory and understanding information, Dr. Abukamil found that Adams understood enough to be competent in this case. I AA 133. In fact, when asked by the district court whether Dr. Abukamil believed Adams would be able to function at trial, he responded affirmatively. I AA 134. The district court further asked

whether Adams would be able to understand complicated questions asked at trial, to which he responded that Adams would need everything explained to him and suggested that the National Center for Criminal Justice and Disability as well as the American Prosecutor Research Institute provides guidelines on how to assist an individual with intellectual deficits at trial. I AA 133-34. Dr. Abukamil found that while Adams would have lesser ability than someone without such deficits, he understood the basics of what was occurring, and, with accommodations, he could assist his counsel. I AA 135. Particularly, he suggested some useful techniques could include using simple language, speaking slowly and clearly, repeating questions, working with Adams in short sessions, and taking frequent breaks. I AA 135.

Moreover, Dr. Abukamil explained that Adams would be capable of making negotiations because when they went over the criminal complaint, Adams was capable of pointing out potential evidence and statements he made and elaborate on his answers. I AA 136-37. For example, he told the police he messed up. I AA 137. Dr. Abukamil found that since he was able to process that the police stated he confessed, he could understand how information might be helpful or harmful, and with that, he could make a decision about taking a plea or proceeding to trial. I AA 137. Indeed, Adams stated in his own words that he could take a plea deal to a lower

sentence or gamble at trial and win or lose and could face a max of twenty (20) years.

I AA 137.

Dr. Abukamil also stated that during Adams' time at Stein, he saw him improve. I AA 138. Specifically, the first two (2) weeks were slow, as noted in Dr. Jones-Forrester's assessment, because he would often answer "I don't know" to questions, but after a while he became more comfortable with the team and was able to accomplish much in his last few months. I AA 138. He further explained that someone with intellectual deficits could improve. I AA 138.

At the time Dr. Abukamil evaluated Adams, he did not have Dr. Jones-Forrester's report. I AA 139. Since his evaluation, Dr. Abukamil has been provided with that report and testified that his opinion did not change regarding Adams' competency. I AA 139-141. Specifically, after reviewing the report, he disagreed with Dr. Jones-Forrester regarding how much is required for competency. I AA 139. In Dr. Abukamil's opinion, Adams did not have a complete understanding, but he did have a rational understanding of what was occurring and was able to use that information to make decisions about his case. I AA 139.

Dr. Abukamil further elaborated that he did not think that there was enough information to find Adams suffered from the learning disorder or major neurocognitive disorder that Dr. Jones-Forrester opined he had. I AA 140. He

explained that psychological and psychiatric diagnoses are not given until problems have persisted and have been addressed so that way they can rule out that it is not an intellectual disability masking a learning disorder, or neurocognitive disability, so one has to work at it for six (6) months before such diagnosis can be made pursuant to DSM 5 medical literature. I AA 140. The way to improve a disability would be to provide education for six (6) months and then follow up to see how the patient had responded to those interventions, and only after the intervention fails, could one be diagnosed with a learning disability. I AA 140. For a neurocognitive disorder, he explained that there had to be a decline from the baseline in order to ensure it would not be an intellectual disability masking as or presenting as these other disorders. I AA 140.

Additionally, Dr. Abukamil shared that he did not conduct attorney observations with Adams because he thought it would be a low data point. I AA 145. Indeed, he said he did not do such an observation because medical professionals, not attorneys, do such evaluations. I AA 148-49. He was concerned that Dr. Jones-Forrester's permitted Adams' attorney to take the lead in asking the questions, which is not a usual practice as attorneys could influence the situation. I AA 148-49. In fact, Dr. Abukamil did not see that as an evaluation, but as a datapoint. I AA 149.

Finally, Dr. Abukamil explained that it would be normal to expect some slippage of the information learned at Stein, so Adams would have benefitted from continuing education. I AA 141. Ultimately, he stood by his finding that Adams was competent. I AA 141.

3. Dr. Roley's Testimony

Dr. Roley testified that she was assigned to Adams' treatment team for about two (2) and a half months. I AA 151. She too found Adams competent under the Dusky standard. I AA 153.

While she agreed with Dr. Jones-Forrester that Adams suffered from an intellectual disability, she disagreed with the testing that Dr. Jones-Forrester utilized during the February 2019 evaluation. I AA 155. Specifically, Dr. Roley was concerned that because Adams never went to school, which was consistent with the Romani culture, the certain testing Dr. Jones-Forrester employed may have been impacted by cultural factors because such tests were developed for Western populations. I AA 155. Thus, she opined that Adams' IQ score was depressed by the test Dr. Jones-Forrester employed and that it would actually be higher if his culture had been taken into account. I AA 157. Indeed, she found that IQ scores had a limited value for someone like Adams because his culture could have impacted his score. I AA 158-59. Ultimately, Dr. Roley explained that her subsequent review of Dr.

Jones-Forrester's reports did not change her opinion as to Adams' competency. I AA 158. Dr. Roley also opined that Adams would benefit from continued competency restoration based on his intellectual deficits. I AA 160.

4. Dr. Damas' Testimony

Dr. Damas testified that she too conducted a competency evaluation with Adams using the Dusky standard. I AA 164-65. During this evaluation, although she agreed that Adams had an intellectual disability, Dr. Damas found Adams competent pursuant to Dusky. I AA 165, 172.

Dr. Damas also explained that she did not have Dr. Jones-Forrester's reports at the time of the evaluation, but a subsequent review of such reports did not change her finding that Adams was competent. I AA 166. She too had issues with the testing Dr. Jones-Forrester conducted with Adams and his attorney. I AA 167. Specifically, she felt that depending on how counsel worded his questions, it could appear that Adams had competency issues. I AA 167, 172.

The district court then asked Dr. Damas how that would work at trial when there were multiple individuals which could not all be told to speak in a certain way. I AA 168. Dr. Damas explained that Adams could be taught how to act in those situations, including what to expect and what to do if he did not understand was occurring. I AA 168.

Ultimately, Dr. Damas explained that if complex questions or concepts were adjusted for Adams, it appeared that he could satisfy the Dusky standard. I AA 169. When the district court asked whether he could understand everything that occurred at trial so he could assist his attorney, Dr. Damas responded that she believed he could. I AA 169.

SUMMARY OF THE ARGUMENT

The district court abused its discretion when it found Adams incompetent without the possibility of restoration and dismissed his charges. Despite there being substantial evidence of Adams' competency, the district court found that due to Adams' mental deficits and slippage of what he had learned during competency restoration, the standards for competency under Dusky and NRS 178.400 could not be satisfied. Indeed, three (3) licensed professionals, who evaluated Adams over a period of several months, found that Adams was competent after Adams completed his competency restoration treatment, whereas one (1) psychologist, that met with Adams twice, concluded he was incompetent. Moreover, the latter psychologist employed a higher standard for competency, which the district court erroneously adopted. Regardless, the district court abused its discretion by finding that Adams could not be accommodated at trial even though there was testimony that suggested he could be competent if the district court provided accommodations at trial.

Therefore, the district court's Amended Decision and Order should be reversed and the matter should be remanded for further proceedings.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT FOUND ADAMS INCOMPETENT WITHOUT THE POSSIBILITY OF RESTORATION

Despite the evidence that Adams adequately met the standards set by Dusky that deemed him competent to stand trial, the district court erroneously found that Adams was incompetent without the possibility of restoration and dismissed his charges without prejudice. I AA 197-98.

A district court's determination of competency after a competency evaluation is a question of fact that is entitled to deference on review. Calvin v. State, 122 Nev. 1178, 1182, 147 P.3d 1097, 1099 (2006). This Court has also stated that a determination will not be overturned if it is supported by substantial evidence. Id.

In Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 789 (1960), the United States Supreme Court provided that the appropriate standard for competency evaluation was whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding [] and whether he has a rational as well as factual understanding of the proceedings against him.” The Nevada Supreme Court echoed the Dusky standard by explaining that “the test to be

applied in determining competency is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational and factual understanding of the proceedings against him.” Jones v. State, 107 Nev. 632, 637, 817 P.2d 1179, 1182 (1991) (*citing Melchor-Gloria v. State*, 99 Nev. 174, 178-180, 660 P.2d 109, 113 (1983)). Similarly, this Court has concluded that an “incompetent defendant” is one who lacks “the present ability to understand either the nature of the criminal charges against him or the nature and purpose of the court proceedings, or is not able to aid and assist his counsel in the defendant at any time during the proceedings with a reasonable degree of rational understanding.” Olivares v. State, 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008).

Nevada has also set forth statutory standards when evaluating a defendant’s competency. Specifically, NRS 178.400 provides:

1. A person may not be tried or adjudged to punishment for a public offense while incompetent.
2. For the purposes of this section, “incompetent” means that the person does not have the present ability to:
 - (a) Understand the nature of the criminal charges against the person;
 - (b) Understand the nature and purpose of the court proceedings;
 - or
 - (c) Aid and assist the person’s counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding.

When a reasonable doubt exists as to a defendant's competency, a hearing is statutorily and constitutionally required. Morales v. State, 116 Nev. 19, 22, 992 P.2d 252, 254 (2000). "The doubt mentioned in NRS 178.405 means doubt in the mind of the trial court, rather than counsel or others." Williams v. State, 85 Nev. 169, 174, 451 P.2d 848, 852 (1969). The trial court has discretion to determine whether such a doubt has been raised. Melchor-Gloria, 99 Nev. at 180, 660 P.2d at 113. However, a district court's decision regarding competency will be overturned if it is determined that the court abused its discretion. Tanksley v. State, 113 Nev. 844, 944 P.2d 240 (1997).

More recently, in Calvin, 122 Nev. at 1182, 147 P.3d at 1099, this Court evaluated whether the aforementioned factors of NRS 178.400(2) comply with the Dusky standard for evaluating a defendant's competency. The Court confirmed that the factors under NRS 178.400(2) comply with the governing Dusky standard and explained:

under Nevada statutory law a defendant is incompetent to stand trial if he *either* is not of sufficient mentality to be able to understand the nature of the criminal charges against him or he is not able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter.

Id. at 1182–83, 147 P.3d at 1100 (internal citation omitted). The Court further emphasized that conducting an accurate competency evaluation is imperative to ensure a defendant is competent to stand trial. Id. at 1183, 147 P.3d at 1100.

Since there was a discrepancy about Adams’ competency to stand trial, the district properly held a challenge hearing. However, despite the overwhelming evidence by three (3) separate licensed evaluators that Adams was capable of understanding and aiding in his defense, the district court still dismissed the charges against Adams. Following the challenge hearing in this case, the district court provided her findings in two (2) orders. In the first order filed on August 13, 2020, the district court employed the aforementioned Dusky standard as well as NRS 178.400 and found that while Adams understood his criminal charges, as well as the nature and purpose of the proceedings, his “intellectual and neurocognitive deficits impair[ed] his ability to understand the nature and purpose of the court proceedings.” I AA 188. Accordingly, the district court felt that such deficits would prevent Adams from being able to aid and assist his counsel in his defense. I AA 188.

In the district court’s second Amended Decision and Order filed on August 20, 2020, the district court confirmed its previous findings that Adams was “not competent to proceed with adjudication because he [did] not understand the nature and purpose of the court proceedings, and because [Adams] [was] unable to assist

counsel during the proceedings with a reasonable degree of rational understanding.” I AA 194. However, the district court added that it now believed Adams was “incompetent without the possibility of restoration” because he suffered from lifelong disabilities that would prevent his ability of improvement. I AA 194.

The district court adopted and applied a standard that sets the bar for competency higher than what is required by law. Indeed, the district court made its findings that Adams was incompetent due to his lifelong disabilities despite three (3) licensed evaluators, using information from a facility that monitored Adams twenty-four (24) hours per day, seven (7) days per week, concluding that Adams was competent to stand trial following his competency restoration. While the district court has the discretion to weigh conflicting evidence, the district court weighed the evidence in such a way that required too high a standard for a finding of competency without providing authority to justify such application.

In addition to the evaluation reports submitted to the district court, the district court had the benefit to hear testimony from Dr. Jones-Forrester as well as the three (3) licensed evaluators from Stein, Dr. Abukamil, Dr. Roley, and Dr. Damas who discussed their reports and conclusions. I AA 78-79. At the challenge hearing, while all three (3) of the Stein physicians agreed with Dr. Jones-Forrester that Adams had intellectual deficits, there was disagreement between the Stein physicians and Dr.

Jones-Forrester regarding how those deficits affected Adams' competency. I AA 100-180.

In its Amended Decision and Order, the district court found that Adams understood the nature of the charges against him pursuant to NRS 178.400(2)(a). I AA 195. However, relying on Dr. Jones-Forrester's findings, it found that the other two (2) prongs of NRS 178.400(2) had not been satisfied. I AA 195-97. Indeed, in evaluating if Adams understood "the nature and purpose of the court proceedings," the district court noted Dr. Jones-Forrester's testimony that Adams had an IQ score of fifty-eight (58), which she found very low compared to the average score. I AA 195; NRS 178.400(2)(b). She also found that Adams had issues with academic skills, paying attention, mental tracking, processing speed, language and spatial skills, as well as memory and executive skills. I AA 195-96. The district court relied on these findings and found that such deficits made Adams "functionally illiterate" and would "impair [Adams'] ability to understand numbers." I AA 195. Moreover, the district court was concerned that Adams' neurocognitive deficits would cause him to misunderstand information. I AA 196. It also expressed that while the Stein evaluators noted Adams' improvement while he was receiving competency restoration treatment, it was concerned by the evaluators' acknowledgement that Adams' understanding of court proceedings could diminish. I AA 196. The Court

found evidence of this slippage of Adams’ understanding of courtroom procedures and the roles of judicial officials in Dr. Jones-Forrester’s Addendum Evaluation from May 2020, which was conducted after Adams was released from Stein. I AA 196. The district court relied on this May 2020 evaluation report to ultimately find that Adams did not understand “the adversarial nature of the legal process.” I AA 196.

The district court then found that Adams’ “intellectual and neurocognitive deficits also impair[ed] [his] ability to assist counsel in [his] defense. I AA 196; NRS 178.400(2)(c). Again, relying on Dr. Jones-Forrester’s May 2020 evaluation report, the district court noted that Adams did not understand the consequences of going to trial, including that he believed he would receive probation if he apologized to the judge. I AA 196. Moreover, the district court was concerned with Dr. Jones-Forrester’s finding that his deficits could cause him to misunderstand information, which in turn would cause him to be unable to assist counsel in his defense. I AA 196. That being said, it also noted that Dr. Abukamil had explained that any difficulties Adams would have in comprehension could be mitigated by certain procedures such as the “use of simple language, speaking slowly, using concrete concepts, and taking frequent breaks.” I AA 196. Interestingly, the district court found that such techniques could not practically be employed. I AA 196.

Finally, in her Amended Decision and Order, the district court found that based on Dr. Jones-Forrester's testimony about his deficits being lifelong and limiting his ability to improve, the district court found that Adams was incompetent without the possibility of restoration. I AA 197.

It first bears noting that the district court relied on Dr. Jones-Forrester's information, which was based on her two (2) meetings with Adams and weighed such findings against three (3) licensed evaluators that based their observations from a facility that monitored Adams twenty-four (24) hours per day, seven (7) days per week, from September 5, 2019 to approximately December 23, 2019. I AA 123. This Court has stated that the district court may consider a wide scope of evidence of Adams' competency and may resolve conflicting evidence that is presented. Calvin, 122 Nev. at 1183, 147 P.3d at 1100; Calambro, 114 Nev. at 971, 964 P.2d at 800. However, this Court has previously justified a district court's finding of competency when it was based on the amount of time an evaluator spent with a defendant and whether there were other experts of the same opinion.

In Pigeon v. State, 133 Nev. 1061, unpublished, 2017 WL 6043408 *1 (2017) (No. 67083, filed December 1, 2017), this Court reviewed a district court order finding a defendant competent. In that case, the defendant was referred to a forensic facility, Lake's Crossing, for a competency evaluation. Id. At a subsequent

competency hearing, a Lake's Crossing doctor testified that while the defendant was diagnosed with chronic schizophrenia paranoia as well as a personality disorder and was not taking medication, he was not suffering from delusions. Id. The doctor also explained that he discussed with the defendant the nature of the charges, the specific allegations against him, and his understanding of the legal process and court system, and that [the defendant] understood the charges and legal process." Id. At this hearing, the defense presented an expert who shared a conflicting opinion. Id. This Court stated it was within the district court's discretion to rely on the Lake's Crossing doctor's opinion, "particularly given that [he] spent more time with [the defendant] and his opinion of competency was supported by two other doctors from Lake's Crossing." Id. (*citing United States v. Hoskie*, 950 F.2d 1388, 1394 (9th Cir. 1991) (discussing when a district court may credit findings of a government expert over those of a defense expert)).

In Pancake v. State, 134 Nev. 993, 413 P.3d 835, unpublished, 2018 WL 1129141 *1 (2018) (No. 71894, filed February 26, 2018), this Court reviewed a district court's decision that found a defendant competent to stand trial. While reviewing the district court's decision this Court examined the district court's review of three (3) licensed evaluators' reports. Id. Two (2) of those reports found that the defendant was competent to stand trial because he was a malingerer, while one (1)

of the evaluators concluded that the defendant was not competent to stand trial due to his “mental delays, impaired abilities, functional confusion, and inability to appreciate the potential outcomes of the case.” Id. The Court noted that while the latter psychologist had a suspicion that the defendant was a malingerer, she did not test the defendant regarding his efforts. Id. Subsequently, one (1) of the evaluators that found the defendant competent, drafted a supplemental report which challenged the testing conducted by the psychologist that found the defendant incompetent. Id. This Court found that in light of two (2) of the three (3) licensed evaluators finding the defendant competent and the testing of the “outlier” psychologist being rebutted, there was substantial evidence supporting the district court’s finding of competency. Id. at *2.

As in Pancake, 134 Nev. 993, unpublished, 2018 WL 1129141 at *1, the three (3) Stein evaluators in this case found Dr. Jones-Forrester’s findings questionable. First, Dr. Abukamil disagreed with Dr. Jones-Forrester’s ultimate finding that Adams was not competent. Indeed, he explained that during his evaluation of Adams, he saw Adams improve. I AA 138. More specifically, Adams was able to understand information that might be helpful or harmful and with that could make a decision on whether to plea or proceed to trial. I AA 138.

Moreover, Dr. Abukamil reviewed Dr. Jones-Forrester's May 2020 evaluation report and it did not change his conclusion that Adams was competent. I AA 139. According to Dr. Abukamil, while Adams did not have a complete understanding, he did have a rational understanding of what was occurring and was able to use that information to make decisions. I AA 139. Additionally, he questioned the segment of Dr. Jones-Forrester's which were based on her observations of Adams with his attorney. I AA 148-49. Specifically, he found that because Dr. Jones-Forrester permitted Adams' attorney to take the lead and ask Adams questions that could have impacted the evaluation as attorneys could influence the situation. I AA 148-49. Most importantly, he highlighted that while Adams' knowledge may slip, he believed that Adams could benefit from continuing education and accommodations at trial, but that such assistance did not affect his competency. I AA 141. It is also important to note that Dr. Abukamil was questioned about how Adams changed his story about what happened to the infant victim with police. I AA 137. Indeed, it was Dr. Abukamil's understanding that Adams previously told the police that the victim in this case had fallen, but then eventually confessed to wrongdoing. I AA 138. Dr. Abukamil stated that assuming the police report was true, that would show that Adams had "the cognitive abilities to hide things from the police, that he [knew] that hey, I'm being accused of wrongdoing and that this is pretty serious." I AA 138.

Likewise, Dr. Roley expressed concern with Dr. Jones-Forrester's findings. Specifically, Dr. Roley challenged the tests Dr. Jones-Forrester employed to evaluate Adams' IQ score. I AA 155-57. Indeed, she found that because Dr. Jones-Forrester did not take into account cultural factors, his IQ score was actually depressed and Adams would benefit from continued competency restoration. I AA 157, 160. Ultimately, Dr. Roley explained that her opinion regarding competency did not change after reviewing Dr. Jones-Forrester's evaluation. I AA 158.

Dr. Damas also shared her concerns with Dr. Jones-Forrester's findings. I AA 166-167. Like Dr. Abukamil, Dr. Damas challenged Dr. Jones-Forrester's observation of Adams with his attorney. I AA 167. Indeed, she found that depending on how counsel worded his questions, it could impact the ability to make accurate competency findings. I AA 167, 172. Additionally, Dr. Damas agreed with Dr. Abukamil that there were ways to accommodate Adams to ensure his understanding at trial. I AA 168.

Thus, unlike the district courts in Pigeon, 133 Nev. 1061, unpublished, 2017 WL 6043408 at *1, and Pancake, 134 Nev. 993, unpublished, 2018 WL 1129141 at *1, the district court's finding that Adams was incompetent cannot be said to have been based on substantial evidence. Indeed, unlike those cases, here the district court gave greater weight to one (1) doctor's finding of incompetency after just two (2)

visits with Adams, as opposed to the opinion of three (3) other licensed evaluators' findings of competency after evaluating Adams in a facility that observes patients twenty-four (24) hours per day, seven (7) days per week. Finding Adams incompetent, despite the challenges to Dr. Jones-Forrester's findings, seemingly heightens what is required under Dusky. This is especially true given that all three (3) Stein licensed evaluators who reviewed Dr. Jones-Forrester's May 2020 evaluation did not change their opinion that Adams was competent and found some of Dr. Jones-Forrester's findings questionable. Indeed, Dr. Abukamil even testified that assuming the police report that stated Adams changed his story with the police was true, that would be evidence that he understood what was transpiring. I AA 137-38.

Regardless of how the district court weighed the conflicting evidence of Adams' competency, the district court abused its discretion by refusing to even attempt to accommodate Adams and proceed with trial.

Dr. Abukamil testified that Adams could understand information at trial if information was explained to him. Indeed, Dr. Abukamil even offered that the National Center for Criminal Justice and Disability as well as the American Prosecutor Research Institute as resources that outlined guidelines on how to assist an individual with intellectual deficits at trial. I AA 133-34. Dr. Aubkamil explained

that certain techniques such as using simple language, speaking slowly as well as clearly, repeating questions, working with Adams in short sessions, and taking frequent breaks would assist Adams. I AA 135. It was Dr. Abukamil's opinion that with accommodations, Adams could assist counsel with his defense. I AA 135. Dr. Damas agreed and added that in instances where a witness could not comply with the accommodations, Adams could be instructed on how to act in those situations and what to do so he could seek clarification. I AA 168. In fact, Dr. Damas explained that if complex concepts were worded in a particular way, which is what she did when she evaluated Adams, it appeared that Adams met the concepts outlined in Dusky. I AA 169. Additionally, Dr. Roley suggested that ongoing competency education classes could benefit Adams as well. I AA 160.

Despite this testimony and recognizing that Adams' counsel had done a "good job" accommodating Adams thus far, the district court expressed ongoing concern with providing Adams with accommodations:

THE COURT: Well, and I have to say I feel like Mr. Howell has done a good job with that. I mean looking through the record things like him telling him how many Christmases and I don't – you know, I feel like that's happening, but I mean I don't know how much even as a Judge we can control. everything that goes on in a trial to make sure – I don't know. It seems very challenging.

I AA 177-78. When the district court expressed such concern, the State responded that accommodations could be made to ensure Adams maintained his competency throughout trial:

MR. O'BRIEN: I don't question that it's challenging, Your Honor, but I do think that the Court has a responsibility to, you know, keep the lawyers on both sides from getting out of line, from, you know, taking the breaks that are necessary for a defendant. There are a lot of accommodations we make for defendants of all mental abilities, age levels, maturity levels and the Court has to accommodate his needs. The – I don't criticize Mr. Howell for his interactions with the Defendant but I think this reliance of, well, things are going to be too complicated for him, I mean it's – partly it's going to be the defense's job to break things down for him. I think the Court is going to need to make sure that he has enough interaction with his attorney.

I think he probably could benefit from some ongoing competency restoration or education while in the jail because I think things are going to fade over time. I think that's just the reality of dealing with someone with his intellectual level, but to say, well, he can't function at the same level as someone else that's accused of a crime –

I AA 178. The State then elaborated that defendants have received such ongoing education in the past while awaiting trial to ensure what the defendant has learned in competency restoration is maintained. I AA 178. Despite this, the district court found that the accommodations proscribed by the licensed evaluators could not be employed “as such techniques would not be practicable at court proceedings like witness testimony.” I AA 196. Accordingly, it found that Adams was incompetent without the possibility of restoration. I AA 197.

The district court abused its discretion when it made this finding in light of the substantial evidence that Adams could be competent if his needs were accommodated prior to and at trial. Indeed, even if ongoing competency restoration courses were not available to Adams, which it appears that the district court failed to investigate, the Court could have employed other accommodations to ensure Adams' continued competency. The district court could have employed any of the strategies offered by the licensed evaluators. For instance, permitting breaks at trial, asking individuals to use simple language or having Adams' counsel explain what happened in such language, repeating questions, and conducting the trial in short sessions to ensure Adams could ask questions during breaks.

It bears noting that accommodations are made in nearly every trial. For instance, defendants and witnesses are permitted to receive the aid of interpreters of all languages during trial. See State v. Russell, 47 Nev. 263, 220 P. 552, 554 (1923). Defendants that suffer from physical disabilities such as hearing impairment receive headphones to ensure they can hear the proceedings. In cases where expert witnesses testify, it is unlikely the defendant of even average intelligence would understand the testimony of such witness. In such a case, it is defense counsel's duty to explain the information to the defendant in a way he or she understands. NEVADA RULES OF PROFESSIONAL CONDUCT, Rule 1.4(b). Further, in some cases, attorneys must

explain expert testimony in simpler terms to members of the lay jury to ensure they understand the complex information as well. Thus, defendants, witnesses, and members of the jury are accommodated at trial. Yet, while explicitly welcoming “a little bit more guidance from the Nevada Supreme Court on some of these issues,” the district court’s sole reason for finding Adams incompetent without the possibility of restoration was that his mental deficits limited his range of improvement. I AA 201. Accordingly, the district court abused its discretion as there was substantial evidence of Adams’ competency and there were measures that could ensure his competency at trial. Therefore, Dismissal of Adams’ charges without prejudice was not warranted and the district court’s decision should be reversed.

CONCLUSION

Based on the foregoing the State respectfully requests that the district court’s Amended Decision and Order be reversed and that the matter be remanded for further proceedings.

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Dated this 1st day of April, 2021.

Respectfully submitted,

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BY */s/ Alexander Chen*

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(8)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 11,091 words.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 1st day of April, 2021.

Respectfully submitted,

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BY */s/ Alexander Chen*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 1, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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