

IN THE SUPREME COURT OF THE STATE OF NEVADA

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THE STATE OF NEVADA,

Appellant,

v.

VINNIE ADAMS,

Respondent.

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CASE NO: 81782

**APPELLANT'S REPLY BRIEF**

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

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**ARGUMENT**

In his answering brief (“RAB”), Mr. Adams states the District Court applied the Dusky and NRS 178.400 factors to find him incompetent without the possibility of restoration. RAB at 5; see also Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 789 (1960). By giving more weight to the testimony of Dr. Sharon Jones-Forrester than to the State’s three experts, however, the District Court expanded the evaluation of Mr. Adams beyond the statutory limits.

Under NRS 178.400(2), an incompetent defendant cannot:

- (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.

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)).

Dr. Jones-Forrester stated her evaluation was intended to exceed the bounds of competency, as it was “intended to examine his intellectual, neurocognitive, and psychological functioning in depth.” 1 AA 10. By crediting her findings over those of experts who strictly examined competency, the district court held the State to a much higher standard than contemplated by the legislature. NRS 178.400.

Mr. Adams asserts his functional illiteracy and low IQ affect his competency. RAB at 10. Since Mr. Adams grew up in a Romany community, it is conceivable a language interpreter may be needed so he can hear information in both English and Romani. 1 AA 36. Mr. Adams’ illiteracy and lack of formal education, independent living, or work experience are culturally consistent in the Romany community and may distort the results of his evaluations. 1 AA 37.

As proof he is unable to gain competency, Dr. Jones-Forrester documented “slippage” after Mr. Adams was returned to the Clark County Detention Center, saying he had forgotten some of what he was taught when retested five months later.

1 AA 121. The fact that Mr. Adams can “slip” is by its very nature proof he can make gains. The issue is whether Mr. Adams can gain sufficient competency to stand trial. Slippage is acceptable so long as it occurs after trial.

Mr. Adams went to the Stein Forensic Facility (hereinafter “Stein”) for treatment and restoration of competency from September 5, 2019 to December 23, 2019. 1 AA 63, 69. Toward the end of his stay at Stein, Dr. Abukamil reviewed Mr. Adams’ case and administered the Georgia Court Competency Test-1992 Revision 1 AA 45-51. “Most defendants who are competent to stand trial score above 70.” 1 AA 48. Mr. Adams scored an 84. 1 AA 48.

After his stay at Stein, three doctors, Dr. Abukamil, 1 AA 50-51, Dr. Roley, 1 AA 52, and Dr. Damas, 1 AA 60, examined Mr. Adams and found him competent to stand trial.

Five months after Mr. Adams returned from Stein, Dr. Jones-Forrester assessed him during a brief role-play of a court appearance with his attorney. 1 AA 123. She again found him incompetent to stand trial. 1 AA 87. Dr. Abukamil, Dr. Roley, and Dr. Damas reviewed and expressed concern with Dr. Jones-Forrester’s May 2020 evaluation report. 1 AA 139, 158, 167, 172.

Q And what sort of concerns did you have?

A I felt like the questioning wasn’t – I didn’t see the exact way that Mr. Howell worded the questions, but the questioning didn’t appear to be at his level, at Mr. Adams’ level, so if he has an intellectual disability, which I think we all agree that he has, there’s a certain way using

simpler language that I don't know– I don't know if it was actually done. There's not any –

1 AA 167.

Without a transcript of that role-playing session, it is impossible to gauge the attorney's wording of questions, which could impact Mr. Adams' understanding. 1 AA 149, 167. Dr. Jones-Forrester, however, relied heavily on this attorney-client observation in deciding Mr. Adams is not competent. 1 AA 121.

#### **A. Understanding the nature of the criminal charges**

The first area of competency is Mr. Adams' ability to understand the criminal charges against him. NRS 178.400(2)(a). Mr. Adams knows he faces child abuse and neglect charges because he “shook the kid.” 1 AA 49. He knows the charge is a felony for which he faces up to 20 years in prison. 1 AA 49. Dr. Abukamil found “Mr. Adams correctly identified his charge and what he was accused of doing.” 1 AA 50. “Mr. Adams knew he faced a felony. He understood the possible punishment associated with the charge.” 1 AA 51.

The District Court found Mr. Adams capable of understanding the nature of the criminal charges against him. 1 AA 188, 198.

#### **B. Understanding the nature and purpose of the court proceedings**

The second area of competency is the ability to understand the basics of the court proceedings. NRS 178.400(2)(b). It is especially important for the defendant

to understand a trial is an adversarial process, so that he knows who in the courtroom is in his corner, who is neutral, and who opposes his interests.

Mr. Adams identified where all the courtroom participants sat and described their roles. 1 AA 48-49. He knew some participants, like his attorney, want to “help me get the best deal possible.” 1 AA 58. He knew the judge was a referee who is “probably on both sides.” 1 AA 48. 65. Mr. Adams described the jury as “six to twelve people who decide if the defendant is guilty or not after listening to evidence and stuff.” 1 AA 56. He understood the types of evidence that could be used against him – “what the doctors said, machine CT scan, bleeding in the brain and me telling them ‘I [expletive]d up.’” 1 AA 49. Most importantly, he understood the process was adversarial, saying the prosecutor “wants to prosecute me, send me to prison, punish me.” 1 AA 49.

Dr. Abukamil found “Mr. Adams identified his role as the defendant. He correctly described the roles of his attorney, the prosecutor, the judge, the witnesses, and the jury. This showed that he knew basic facts about what these individuals would do during disposition of his case and the adversarial nature of trial.” 1 AA 51.

In her evaluation of Mr. Adams’ ability to understand court proceedings, Dr. Jones-Forrester said he could “accurately identify the role of the defense,” that the District Attorney can “talk to the judge and make me lose,” and that he must “be open with his defense attorney, and tell him everything.” 1 AA 90. He said he should



be “calm, cool, and collected” in court. 1 AA 90. The doctor then stated Mr. Adams “did not appear to appreciate any further nuances about the role of the prosecution.” 1 AA 90. He could not articulate the difference between the judge and jury in terms of deciding if he is guilty or not. 1 AA 90. He struggled to understand how his relationship with his attorney must differ from other relationships. 1 AA 90. He would also be anxious and nervous. 1 AA 90. Mr. Adams’ attorney said what he missed was the nuances, the “complete understanding of what’s going on.” 1 AA 173.

The district court expressed concern that Mr. Adams would not be able to follow all the technical testimony in his case or write notes to his attorney:

THE COURT: Well, what I’m saying is that if he’s not understanding, for example, technical, legal questions like establishing elements of a crime or – I mean just – it’s more than just him. I guess that’s my concern is that it’s – it’s not just that if he potentially testifies the questions are simple enough, it’s can he understand everything that’s going on in the trial at a level that he can assist his attorney?

THE WITNESS (Dr. Dumas): I didn’t see any reason to believe that he couldn’t. I’m not sure how we could test for that other than asking him about the evidence against him and just what he knows already, and observing him on the unit and how he interacts with people and how he adjusts to his surroundings.

1 AA 169.

Mr. Adams is not, however, planning to represent himself. It is his attorney’s job to handle the nuances of court proceedings. All Mr. Adams requires is the big picture of what is happening in the courtroom. The district court held Mr. Adams to

a very high standard, way above that called for under NRS 178.400. His attorney is charged with understanding the legal nuances, the technical testimony, and the elements of the crime, not Mr. Adams. Mr. Adams knows the purpose of the court proceedings, how to comport himself in front of the judge and jury, and the role of everyone in the courtroom. He is competent on this prong.

**C. Ability to assist counsel in the defense during the proceedings with a reasonable degree of rational understanding**

Finally, the third area of competency is that a defendant must be able to assist his attorney in defending his case. NRS 178.400(2)(c). He must be able to reasonably focus on the matter at hand, understand what information his attorney needs, and comprehend the proceedings.

Mr. Adams knew the name of his attorney. 1 AA 49. He said “he would want to sit with his lawyer and know what’s going on with the case and tell him everything, I don’t lie to him.” 1 AA 49. “Mr. Adams stated he can help his attorney in his defense by ‘telling him everything. Tell him what’s up.’” 1 AA 58.

Mr. Adams has made a certain effort in evading his charges. At the evidentiary hearing, Dr. Abukamil testified Mr. Adams first told the police the victim sustained her injuries in a fall, then eventually confessed to wrongdoing. I AA 137-38. If the police report is accurate, Dr. Abukamil said “it shows that he has the cognitive abilities to hide things from the police, that he knows that hey, I’m being accused of wrongdoing and that this is pretty serious.” I AA 138. While in Stein, Mr. Adams

“appeared to purposefully avoid attending [competency restoration] group” sessions. 1 AA 56. “Staff shared that his behavior and statements made during treatment team were incongruent with his behavior on the unit and with peers.” 1 AA 55. When with the evaluators, he discussed “flies on leashes” that turn into German Shepherds. 1 AA 56. With the facility staff and other clients, though, Mr. Adams “converses normally.” 1 AA 56. Mr. Adams knows “if [he] is found competent, [he] face[s] charges.” 1 AA 92. None of this is to say Mr. Adams is malingering, though it does show he is motivated to work to defend his case. He will bring this same motivation to his efforts to assist his attorney with his defense.

Mr. Adams discussed how he would consider a plea deal. 1 AA 49. He acknowledged a plea deal should have a shorter sentence and that going to trial was “taking a gamble.” 1 AA 49. He knew he could plead guilty or not guilty. 1 AA 50. Dr. Abukamil found “Mr. Adams described a positive relationship with his attorney and was prepared to work with him to obtain a favorable outcome for his case.” 1 AA 51. The defendant was able to list “advantages and disadvantages of accepting a plea deal compared with going to trial.” 1 AA 51.

Dr. Jones-Forrester said Mr. Adams knew he could face “6-15” for this crime. He thought he would get probation since it was his first offense and “other people said I’d get it,” especially if he was willing to “tell the judge I’m sorry.” 1 AA 90. He said probation meant he would stay home and “there may be classes.” 1 AA 90.

He knew accepting a deal was his choice. 1 AA 90. He understood attorney-client confidentiality to mean “you can’t tell other people” and “you don’t want others to know what happened.” 1 AA 91. He was able to identify the State’s burden of proof and that he could not be forced to testify. 1 AA 91. He was not able to articulate potential deals other than probation or 6-15 years in his case. 1 AA 90. He could not name his constitutional rights. 1 AA 90. Dr. Jones-Forrester states the other doctors who evaluated Mr. Adams did not have the “opportunity to directly observe Vinnie’s interactions with his defense attorney.” 1 AA 92. She fears Mr. Adams may have rote memorized the legal concepts without engaging with them. 1 AA 92.

The district court said the evaluators at Stein were not trial lawyers, so they would have a difficult time evaluating Mr. Adams’ ability to interact with his attorney. 1 AA 177.

THE COURT: So I mean I think, you know, look, these things are complicated and we have different standards, and I think part of the assistance of counsel issue is that, you know, we have people who are trained to be medical professionals and mental health professionals, not – they’re not trial lawyers, right, so I think sometimes that’s a difficult prong for them to evaluate because if somebody can interact with them in a particular setting it doesn’t necessarily translate to what a trial is like, right, because they’re very, you know, chaotic...

1 AA 177.

Dr. Jones-Forrester is also not a trial lawyer, nor does she work in the field of restoring competency. 1 AA 101, 122. In her opinion, she found Mr. Adams

incompetent and the other doctors competent because she observed him with his attorney and they did not. 1 AA 121. She said:

I think Stein did several things that really did reflect a good understanding of his intellectual functioning. They were careful to use the Slater Method. They provided him with a very high level of structure and support. They considered carefully his reading difficulties and that's noted throughout the Stein records. The only thing that I think was missing was that they didn't have the direct observation with counsel, and direct observation with counsel in this case is so critical because it yielded understanding of his competency difficulties that are simply very difficult to get at in any other way.

1 AA 121.

Neither the Dusky standard nor NRS 178.400 require that every defendant be as competent as any other. Neither require every defendant have the skills to represent himself as effectively as an attorney. Rather, the standards used in Nevada require a defendant understand the crime he is alleged to have committed, understand the basics of courtroom procedure, and be able to help his attorney with his defense. Mr. Adams meets these standards.

Regardless of how the district court weighed the conflicting evidence of Mr. Adams' competency, the district court abused its discretion, as there exists substantial evidence Mr. Adams is competent *when his needs are accommodated*. The district court abused its discretion in finding "such techniques would not be practicable at court proceedings like witness testimony." 1 AA 196.

In its Amended Decision and Order, filed August 20, 2020, the district court said Mr. Adams identified the prosecution as able to find him not guilty. 1 AA 196. Dr. Jones-Forrester, testing Mr. Adams five months after he left Stein, said “At times he says he seems to understand the role of the prosecution and at other times he says the role of the prosecution is to find me not guilty or guilty.” 1 AA 110. Mr. Adams knows the prosecutor “wants to prosecute me, send me to prison, punish me.” 1 AA 49. The precise roles may have slipped in his mind after five months of not being reinforced, but he is capable of understanding them.

The district court cited concerns that Mr. Adams’ understanding may “slip” over time. 1 AA 196. This is not the standard as articulated in Nevada law. Mr. Adams must be competent to stand trial, but need not retain this competency over the course of his lifetime. The presumption is that Mr. Adams will never again have an encounter with the criminal justice system.

The district court also said Mr. Adams feared angering any of the court participants. 1 AA 196. In fact, what the evidentiary hearing revealed is that he felt an affinity, a friendship, with his attorney. 1 AA 110. Dr. Jones-Forrester said, “He perceives his relationship with his defense attorney, Mr. Howell, as a friendship. I worry about that in the context that it’s likely to lead him to have difficulty with disagreeing with defense strategy.” 1 AA 110. Mr. Adams will not be the only defendant to feel his attorney should take the lead in defense strategy matters.

Mr. Adams understands the nature and seriousness of the charges against him, he understands how his guilt or innocence will be weighed in court, and he is willing and able to assist his attorney with his defense. “Although the exact level of his cognitive limitations remains unknown, these impairments do not impact his competency to stand trial.” 1 AA 59.

### **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.

Dated this 26th day of October, 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 page and type-volume limitations of NRAP 32(a)(7)(A) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 2,923 words and does not exceed 15 pages.
- 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 26<sup>th</sup> day of October, 2021.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 26, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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