

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 SUPPLEMENTAL BRIEF**

**Appeal from the District Court's Decision that Respondent is Incompetent  
Without the Possibility of Restoration  
Eighth Judicial District Court, Clark County**

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**Appeal from the District Court’s Decision that Respondent is Incompetent  
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**STATEMENT OF THE ISSUE(S)**

- (1) What burden of proof should apply in a competency determination?
- (2) Which party has the burden of proof in a competency determination?
- (3) What competency standard should a district court apply if not Dusky?
- (4) What competency standard did the district court apply below?

**ARGUMENT**

**I. BURDEN OF PROOF STANDARDS FOR COMPETENCY DETERMINATIONS**

This case had two separate court rulings regarding Adams’ competency. The first ruling the court made was that Adams was not competent to stand trial. The second, perhaps more troubling decision, was that the court declared Adams

incompetent without the possibility of restoration, thereby resulting in his case being dismissed.

**1. The burden of proof applied to a competency hearing for a defendant to stand trial is by a preponderance of the evidence**

Defendants are normally presumed to be competent. Where a reasonable doubt exists as to a defendant's competency, procedural due process requires that a competency hearing be held. NRS 178.415; Melchor-Gloria v. State, 99 Nev. 174, 180 (1983). Such a competency hearing must be conducted when there is "substantial evidence" that the defendant may be mentally incompetent to stand trial. Id.

Once it is determined that a competency hearing is required, then it becomes the responsibility of the district court to determine if the defendant is mentally fit to stand trial.

The United States Supreme Court has held that the burden of proof when deciding a defendant's competency may not exceed a preponderance of the evidence burden of proof. Cooper v. Oklahoma, 517 U.S. 348 (1996). In Cooper, the Supreme Court rejected an Oklahoma statute that required the defendant to show by clear and convincing evidence that he was not competent to stand trial. The Court reasoned through historical reference that the preponderance of the evidence burden of proof was deeply rooted, and that the vast majority of jurisdictions applied this standard to competency hearings. Id., at 360. Based on the Supreme Court's holding, to apply

any standard beyond a preponderance of the evidence when deciding an individual's competency to stand trial would offend the Due Process Clause of the Constitution.

**2. A different standard applies when a court decides that the defendant is incompetent without a probability of restoration**

Proving that a defendant is incompetent to stand trial by a preponderance of the evidence is the standard at a competency hearing. However, a different standard applies when the court decides that a defendant is unlikely to be restored to competency.

In Jackson v. Indiana, 406 U.S. 715 (1972) the United States Supreme Court examined the question of how long an individual charged with crimes could be held in pretrial status as incompetent to stand trial. In its decision, the Supreme Court held:

a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than a reasonable period of time necessary to determine whether there is **substantial probability that he will attain capacity in the foreseeable future**. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant. Id., at 738 (emphasis added).

The Supreme Court was remiss to set any definitive timeframe or deadlines on its use of phrases like “reasonable period” and “substantial probability.” However, the Court made clear that a “substantial probability” standard should be applied when courts must decide if a criminal case may continue. If there is a

substantial probability the defendant will attain the capacity to stand trial in the foreseeable future, then the case may proceed to trial. Conversely, if a substantial probability does not exist that the individual will be competent to stand trial, then the criminal charges would be dismissed.

The Nevada Legislature codified this language in 1981 when it added subsection (5) of NRS 178.425 to read:

Whenever the defendant has been found incompetent, with no substantial probability of attaining competency in the foreseeable future...the proceedings against the defendant which were suspended must be dismissed.

This requirement that there must be a substantial probability is higher than what is required at a normal competency hearing. As mentioned in the previous section, a party must prove by a preponderance of the evidence (more likely than not) that the individual is incompetent to stand trial. However, here the issue is not whether an individual is merely incompetent to stand trial at a particular point in time, but whether the criminal charges should be forever dismissed. This heightened standard certainly makes sense given the State's interest in protecting society from those that have committed crimes. *See United States v. Salerno*, 481 U.S. 739, 749 (1987).

If a defendant is found competent to stand trial, he will still benefit from a trial's inherent constitutional protections. Proceeding to trial where a defendant cannot even show he is "probably" incompetent violates no due process concern.



The State bears the burden of proof for all elements of the crimes charged, including the element of intent. Even where the jury finds the defendant factually guilty of the crime, the jury will still have to find the required *mens reas*. If the jury, confronted with evidence of the defendant's marginal competency, finds him incapable of the requisite intent, the jury must find him not guilty. The defendant's personal characteristics as they relate to competency will be evaluated a third time, after the competency hearing and the trial, when the judge contemplates an appropriate sentence. Evidence of marginal competency can be presented to the sentencing judge as mitigating circumstances. A finding of competency to stand trial, then, does not end the story for the defendant, as he has other opportunities to have his unique circumstances weighed against his culpability.

By contrast, if the defendant is found incompetent to stand trial, with no hope of regaining competency, the matter ends. The State cannot hold him accountable for his actions that have harmed society. His victims will not see justice. Further, where the defendant's intellect is unlikely to sharpen in the future, the defendant will unlikely be held accountable for any future crimes. Competency, after all, is not based on the seriousness of the alleged crime, but on the characteristics of the defendant.

Therefore, while a mere preponderance of the evidence standard should be applied to a normal competency determination to stand trial, the court must have

facts to support a substantial probability that the defendant will not regain competency in order to terminate the criminal proceedings.

## **II. PARTY WISHING TO DECLARE THE DEFENDANT INCOMPETENT SHOULD BEAR THE BURDEN OF PROOF**

The United States Supreme Court acknowledged in Medina v. California, 505 U.S. 438 (1992) “there is no settled tradition on the proper allocation of the burden of proof in a proceeding to determine competence.”. However, due process does not require that the State bear the burden of proof that a defendant is competent to stand trial. Id.

Where the standard of proof is by a preponderance of the evidence, the only time it matters which party bears the burden of proof would be “where the evidence that a defendant is competent is just as strong as the evidence that he is incompetent.” Medina, 505 U.S. at 449, 112 S. Ct. at 2579.

In a competency battle, the stakes are high for each party, and for society. A just society cannot permit an incompetent defendant to face trial. On the other hand, the government’s interest in protecting society from those charged with crimes is both “legitimate and compelling.” United States v. Salerno, 481 U.S. 739, 749, 107 S.Ct. 2095 (1987). To balance these concerns, it may be fruitful to examine the consequences of a decision for either side.

Nevada statutes do not clearly establish which party bears the burden of proof in a challenge to competency. California, Connecticut and Pennsylvania place the

burden on the party raising the issue. Medina, 505 U.S. at 447, 112 S. Ct. at 2578. In California, defendants are presumed competent unless it is proven by a preponderance of the evidence that the defendant is mentally incompetent. Cal. Penal Code § 1369 (f); *see also* People v. Ary, 51 Cal.4<sup>th</sup> 510 (2011).

Georgia, Iowa, New Mexico, and Texas place the burden of proving incompetence on the defendant. Id. Delaware, Massachusetts, New Hampshire, and South Dakota place the burden on the prosecution. Id. In Utah, the burden is on the proponent of incompetency at the competency evaluation, but once the defendant has been found incompetent and is committed to a state facility, the burden shifts to the proponent of competency to reinitiate proceedings. Utah Code Ann. 77-15.5; 77-15-6(4).

A court normally applies the burden of proof assigned by statute. However, when the party that bears the burden of proof is not specified by statute, courts will generally assign the burden to the party seeking the request. Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 56 (2005). Moreover, in the case of determining one's competency to stand trial, the difficulty of determining the truth "may make it appropriate to place the burden of proof on the proponent of an issue ..." Cooper, 517 U.S. at 366.

Because it is the defendant that benefits from having avoiding trial, it would be appropriate for him to bear the burden of proof. Although Nevada statutes do not

specifically state that defendants are presumed competent, this fact is implied by the simple fact that the vast majority of defendants never undergo a competency evaluation. Only when there is a reasonable doubt as to one's competency is a hearing even warranted. Therefore, an individual arguing that his incompetency should prevent him from standing trial is the party seeking a request, and the party that should bear the burden of proof.

### **III. DUSKY IS THE PREVAILING STANDARD FOR COMPETENCY DETERMINATIONS**

The Dusky standard is the appropriate standard for competency determinations. All fifty states and the federal courts use a variation of the Dusky standard. Justice Study at 1-2; *see Dusky v. United States*, 362 U.S. 402 (1960). Dusky held the test to be used 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 as well as factual understanding of the proceedings against him.” Id.

The Dusky standard is codified into Nevada law at NRS 178.400, which states:

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.

NRS 178.400(c) is not part of the language used in Dusky, but the Nevada Legislature has decided that a defendant must not stand trial if he either cannot understand the charges against him or he is not able to aid or assist his counsel at trial or after. Calvin v. State, 122 Nev. 1178, 1180 (2006). Despite the variation, this court has held that the statute is consistent with the Dusky standard. Id.

Notably, however, the standards set forth in Dusky and NRS 178.400 speak to a person's present abilities, not his future ones. The statutory scheme as well as the cases acknowledge the possibility that a person while not presently competent may be restored to competency and permitted to stand trial.

#### **IV. THE DISTRICT COURT APPLIED A HIGHER STANDARD THAN DUSKY REQUIRES**

**1. The district court's erroneously placed an overwhelming emphasis on Adams' raw intelligence rather than his ability to understand and aid in his proceedings**

The district court's decision to rely solely on Dr. Jones-Forrester was a fundamental deviation from the information that doctors use to assess competency under Dusky. Rather than focusing on Adams' abilities pursuant to Dusky, the district court relied on Dr. Jones-Forrester and her emphasis on raw intelligence, education, and attorney-client interaction. In doing so, the district court erred because it ignored the progress Adams made at Stein in favor of concentrating on

his intellectual deficiencies. Based upon his intellectual deficiencies, and not his progress under Dusky, the district court then found a substantial likelihood that Adams would not be competent in the foreseeable future and dismissed the criminal charges against him.

Dr. Jones-Forrester did not conduct a competency evaluation. Instead, she wrote in Adams' evaluation that "this neuropsychological evaluation is intended to examine his intellectual, neurocognitive, and psychological functioning in depth rather than to address only competency specifically..." AA 10. From the outset, Dr. Jones-Forrester recognized that her evaluation was not one that is normally administered to individuals that are undergo a competency evaluation. Moreover, the district court acknowledged that Dr. Jones-Forrester's inquiry went further than mere competence when it highlighted that "[T]he Stein doctors did not perform testing on the extent of Mr. Adams's intellectual disability." Adams AA 187. Despite acknowledging that its evaluation exceeded what is required, the district court erroneously held that Dr. Jones-Forrester's conclusions should carry the day.

In its Decision and Order, the district court acknowledged competency determinations are guided by Dusky and NRS 178.400. The district court proceeded to recognize that "[T]here is no dispute that Mr. Adams understands the nature of the charges against him." AA 195. Thus, the district court inherently acknowledged that one consideration of Dusky and subsection (1) of NRS 178.400, that the person

does not understand the charges against him, were not proven by a preponderance of the evidence.

The district court then proceeded to explain that Dr. Jones-Forrester's findings raised doubt about his ability to understand the nature and purpose of the court proceedings. AA 195. The district court applied Dr. Jones-Forrester's testimony that Adams had a low IQ that was compounded by neurocognitive deficits, including low academic skills and illiteracy, to support the contention that he cannot understand the proceedings against him. The district court made this finding despite acknowledging that the three Stein doctors disputed Adams' mental deficits and explained that he had noticeably improved while at Stein. AA 196.

At issue here is the overwhelming emphasis the district court placed on Adams' intellectual disabilities as opposed to his ability to understand the charges and proceedings, and to assist his attorney. All the individuals that tested Adams acknowledged that he had some level of intellectual disability. Yet despite this acknowledgment, the Stein doctors that interacted with and tested Adams all believed that he was competent to stand trial even with his intellectual deficiencies. They had seen improvement during his time at Stein, and their use of objective tests supported their conclusion that he was competent to stand trial.

However, the district court ignored their observations and opinions in favor of Dr. Jones-Forrester, who considered much more than the requirements of

competency. The district court was fixated by Dr. Jones-Forrester's examination of Adams' IQ and her observation of a conversation between Adams and his defense attorney.

While the Stein evaluators acknowledged that IQ and attorney-client observations could have some benefit in determining competency, they argued that such information was of limited value. Dr. Abukamil explained, his process included weekly meetings with Adams, a review of his past psychiatric and treatment history, specific questions about his charges, general questions about court, and the administration of a formal test to assess competency. AA 131. The Stein evaluators also agreed that an observation of an attorney-client meeting was of limited value in this situation because the relationship between the two was good. Moreover, they noted concerns about allowing an attorney to ask questions of the client because the questions could unintentionally influence the situation. AA 148, AA 159. Undeterred by the explanation that this information was of limited value in assessing competency, the district court still ruled in favor of Adams.

***a. Understanding the Charges***

Dr. Abukamil testified that "Mr. Adams correctly identified his charge and what he was accused of doing." Adams AA 50. "Mr. Adams knew he faced a felony. He understood the possible punishment associated with the charge." Adams AA 51. Mr. Adams knows he faces child abuse and neglect charges because he "shook the



kid” and the C.T. scan showed “blood in the brain.” Adams AA 49. He knows he faces up to “max of 20 years” in prison. Adams AA 49.

***b. Understanding the Court Proceedings***

Mr. Adams identified where the courtroom participants sat and described their roles. Adams AA 48-49. He knew some participants, like his attorney, want to “help me get the best deal possible.” Adams AA 58. He knew the judge was a referee who is “probably on both sides.” Adams 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.” Adams 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 fucked up.’” Adams AA 49. Most importantly, he understood the process was adversarial, saying the prosecutor “wants to prosecute me, send me to prison, punish me.” Adams AA 49. He articulated factors to consider in a plea bargain. Adams AA 50, 65. He knew accepting a deal was his choice. Adams AA 90. He understood declining a deal was “taking a gamble.” Adams AA 50. If he went to trial, “I could lose and get the maximum penalty.” Adams AA 50.

***c. Assisting Counsel***

Mr. Adams knew the name of his attorney and wants to sit with him. Adams AA 49. He would “tell him everything, I don’t lie to him,” and would tell him “what’s up.” Adams AA 49, 58. He discussed how he would consider a plea deal.

Adams AA 49-50. “Mr. Adams described a positive relationship with his attorney and was prepared to work with him to obtain a favorable outcome for his case.”

Adams AA 51. If someone lied about Mr. Adams in court, he would “tell me lawyer.” Adams AA 50.

Dr. Abukamil wrote:

Mr. Adams described a positive relationship with his attorney and was prepared to work with him to obtain a favorable outcome for his case. Mr. Adams listed advantages and disadvantages of accepting a plea deal compared to going to trial. Mr. Adams identified possible evidence that could be used in his case. He described how that evidence would factor into his decision of accepting a plea deal. When I evaluated M. Adams, he still experienced cognitive deficits, but his mood was stable. Due to his cognitive impairments, I met with him on several occasions to review the materials, used simple terms, and visual aids. He accepted and followed my efforts. This set of findings showed that with appropriate guidance and support from his attorney, he could participate rationally in his legal proceedings.

Adams AA 51.

Dr. Roley concluded:

In terms of legal knowledge, Mr. Adams has adequate factual and rational understanding of his charges and penalties he may face if convicted. He also has adequate understanding of legal processes and courtroom participants. Mr. Adams has a rational understanding of the accusations against him and is capable of working with his attorney in his defense. As previously noted, Mr. Adams appears to have some cognitive impairments. It is recommended that counsel present information simplistically and have Mr. Adams relay the information back to ensure comprehension. Mr. Adams is knowledgeable regarding appropriate courtroom behavior and it is believed that he can comply with these rules . Given Mr. Adams's presentation, it is my opinion that he meets the requirements of Nevada Revised Statute 178.400 and the Dusky Standard for Mental Competency at this time.

Adams AA 59.

Dr. Damas found:

During the evaluation, Mr. Adams demonstrated a basic yet factual understanding of his charges and potential sentencing. He provided correct responses to most of the legal process questions and demonstrated an understanding of the roles of legal participants and courtroom procedures. During his hospitalization, Mr. Adams reported he is willing to work with his attorney and given his presentation with staff and peers he is capable of effectively communicating with his attorney.

Adams AA 66.

The Stein doctors noted Mr. Adams improved while he was at Stein but that his understanding of court proceedings might slip over time, and recommended he undergo regular reeducation on court proceedings. Adams AA 187. Although they suggested ways to assist Mr. Adams, the district court found these would be too burdensome for the court:

Dr. Abukamil acknowledged that Mr. Adam would face difficulties during court proceedings, but opined that the difficulties would be mitigated by the use of simple language, speaking slowly, using concrete concepts, and taking frequent breaks. But, such techniques would not be practicable at court proceedings like witness testimony. If Mr. Adams is unable to understand court proceedings, he cannot rationally assist counsel in his defense.

Adams AA 188. Failing to accommodate Mr. Adams' needs at trial was an abuse of discretion—just as a non-English speaker is entitled to the use of a language interpreter, so is Mr. Adams entitled to the use of techniques that make it possible

for him to understand the court proceedings. Courtroom efficiency is not a more valid concern than the State's interest in prosecuting crimes.

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." Adams AA 59.

As mentioned, there is no dispute among any of the doctors that evaluated Adams that he suffers from some degree of intellectual disability. The doctors all recognized this fact and incorporated that consideration into their final determination of competency. However, rather than applying Dusky, the district court placed an undue influence on Adams' IQ and level of intellectual disability.

Adams is only required to assist his counsel by communicating relevant events to him; he is not expected to replace his attorney and conduct his own trial. Neither the Dusky standard nor NRS 178.400 require that every defendant be as competent as any other. Rather, the standards 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. Adams meets these standards.

**2. Adams' intellectual disabilities were not grounds to dismiss his case when he was otherwise competent under Dusky**

The district court then used Adam's intellectual and neurocognitive deficits to render him incompetent without the possibility of restoration. AA 197. The district court's decision to declare Adams incompetent without the possibility was written in a paragraph explaining its rationale:

At the challenge hearing, Dr. Jones-Forrester testified that Mr. Adam's low IQ and neurocognitive deficits would be lifelong disabilities. Mr. Adam's educational shortcomings may be improved upon with literacy, numeracy, and writing training, but Mr. Adams's intellectual and neurocognitive deficits would significantly limit the range of any improvement. Based on Mr. Adams's lifelong intellectual and neurocognitive deficits, the Court finds that Mr. Adams is incompetent without the possibility of restoration. AA197.

This ruling by the court was an abuse of discretion because it ignored the Dusky standard in favor of Adams' intellectual deficiencies. "The fact that a defendant might not understand the proceedings unless they are explained to him in simple language would put an additional burden upon counsel, but certainly does not establish that the defendant is incompetent to stand trial." United States v. Glover, 596 F.2d 857, 867 (9th Cir. 1979).

Placing an excessive importance on IQ as opposed to Adams' abilities under the Dusky standards creates an inherent problem because an individual's IQ is unlikely to change much during the time that a person is being restored to competency. Understandably, Adams' IQ combined with his lack of education, certainly makes him more susceptible to having issues with some concepts and with

court in general. Nevertheless, not understanding a concept is a possibility for any defendant. For example, a defendant who is charged with murder may not understand the science behind DNA, forensics, and the autopsy, but that lack of understanding does not bar him from being criminally tried. The Dusky standards appropriately considers an individual's ability to understand the proceedings rather than the person's academic or intellectual knowledge of the situation.

In concentrating on the role of intelligence, the district court held that Adams cannot be criminally responsible for his actions, even if they have shown an ability to be restored to competency and improved in their knowledge of the court system. This was an absolute abuse of discretion by the district court.

### **CONCLUSION**

The district court's decision to disproportionately rely on raw intellect will have widespread consequences. Individuals undergoing competency evaluations are not routinely tested on their intelligence because intelligence is not what Dusky requires. Here, the opinion of an independent doctor not involved with evaluating Adams' competency to stand trial, but instead focused on his IQ and his attorney interactions, carried the day. If this is to be an allowable standard for the dismissal of a criminal case, it would behoove all defendants to present evidence of their intellectual deficiencies in hopes of avoiding any repercussions for their actions. If this became the standard, the factors set forth in Dusky would become entirely

irrelevant. Thus, it is for the above-stated reasons that it is requested that this Court reverse the district court's order or dismissal.

Dated this 13<sup>th</sup> day of April, 2022.

Respectfully submitted,

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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) 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 4,249 words and does not exceed 30 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 13<sup>th</sup> day of April, 2022.

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 13, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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