IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant, No. 81782

v.

VINNIE ADAMS,

Respondent.

_____/

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE NEVADA DISTRICT ATTORNEY'S ASSOCIATION

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I. INTRODUCTION

This Court has invited the Nevada District Attorney's Association, hereafter "NDAA," to participate in this matter. The NDAA is an organization composed of 17 elected district attorneys of Nevada.

In this case, the district court found that Vinnie Adams (hereafter "Adams") is incompetent without the probability of restoration. While the applicable standard of review is deferential, here, it is apparent from the record that the district court's conclusion was premised upon an erroneous application of a heightened standard of competency that departed from *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788 (1960) and NRS 178.400. Because substantial evidence from multiple experts established

that Adams was competent under the *Dusky* standard, this Court should reverse the district court's order.

Additionally, Adams and other *amicus curiae* urge this Court to create a new rule that places the burden on the prosecution to demonstrate competency. This Court should decline to do so because their urged interpretation ignores the compelling public interests of community safety, as well as the rights of victims as established by the Nevada Constitution.

II. ARGUMENT

NDAA hereby incorporates by reference the procedural history and factual recitation contained in pages 2-32 of the State's Opening Brief.

Four issues are currently before this Court: 1) the burden of proof applicable to a finding of incompetence without a probability of restoration; 2) who bears that burden of proof; 3) whether this Court should depart from the competency standard applied in *Dusky*; and 4) what standard was actually applied by the district court.

A. A Finding of Incompetence Without a Probability of Restoration Must Be Supported by Substantial Evidence.

The district court found that Adams is incompetent without a probability of restoration. Where a person is in custody because of his incapacity to proceed to trial, he cannot be held longer than is reasonably necessary to determine whether there is a substantial probability that he

can be restored to competency in the foreseeable future. If a court finds that restoration to competency is not possible, the State must either pursue civil commitment or release the defendant. *Jackson v. Indiana*, 406 U.S. 715 (1972). Because the *Jackson* decision articulated that a substantial probability of restoration applies where the government seeks to proceed to trial, it follows that criminal charges may not be dismissed against a defendant absent a demonstration that there is a substantial probability the defendant's competence cannot be restored. This approach is supported by NRS 178.425(5):

> 5. Whenever the defendant has been found incompetent, with no substantial probability of attaining competency in the foreseeable future, and released from custody or from obligations as an outpatient pursuant to paragraph (d) of subsection 4 of NRS 178.460, the proceedings against the defendant which were suspended must be dismissed...
>
> NRS 178.425(5).

At a competency hearing, the defendant must demonstrate, by a preponderance of the evidence, that he is incompetent to stand trial. At issue here, however, is not merely the defendant's competency at a discreet point in time. Instead, it is whether he can ever be legally competent in the future. The implications on public safety, victims, and the interests of justice following a decision to dismiss criminal charges due to incompetence cannot be overstated. With the charges against him

dismissed, Adams can move freely about the community, with no ability of law enforcement to monitor him or otherwise protect the victim and other potential victims. Regardless of his current competency status, he presents an ongoing threat to the community. Although the State may theoretically refile in the event of a subsequent finding that Adams has regained competence, there is no guarantee for re-evaluation at all, let alone re-evaluation within a reasonable time frame. The State is indefinitely prevented from pursuing justice on behalf of Nevadans.

The United States Supreme Court has made clear that the government has a legitimate and compelling interest in protecting society from those charged with crimes. *United States v. Salerno*, 481 U.S. 739, 749, 107 S. Ct. 2095 (1987). Moreover, in Nevada, victims have enhanced constitutional rights under our state constitution. As a result of the district court's finding, the victim cannot enjoy their constitutional rights to be reasonably protected from the defendant, and to timely disposition of the case. Nevada Constitution, Article I, Section 8A (1)(b) and (i). Such an infringement may at times be inevitable where a defendant is genuinely incompetent with no hope of restoration. However, the gravity of its implications militates that a district court's finding of incompetence without hope of restoration, and the ensuing dismissal, should not be

upheld absent substantial evidence that a defendant can be restored to competence. To do otherwise would render the constitutional rights bestowed upon victims by Nevada voters nugatory.

B. Adams Should Bear the Burden of Demonstrating He Is Incompetent and Incapable of Being Restored to Competence.

In its amicus brief, the Washoe County Public Defender (hereafter WCPD) argues that NRS 178.425(5), NRS 178.450(2), and NRS 178.46(4)(d) "implicitly place the burden of establishing competency—after he or she has been committed for treatment to competency—on the State." Brief of the Washoe County Public Defender's Office as Amicus Curiae, 11. NDAA disagrees with this analysis. A defendant is presumptively competent. *Melcor-Gloria v. State*, 99 Nev. 174, 660 P.2d 109 (1983). It follows, then, that a party seeking a finding of incompetence without the possibility of restoration should bear the burden of proof. As the State observes in its supplemental brief, due process does not mandate imposing upon the government the burden of proving that at defendant is competent to stand trial. *Medina v. California*, 505 U.S. 438 (1992). Nevada statutes are silent as to which party should bear the burden of proof. Where statutes do not provide guidance as to which party should bear the proof in a competency hearing, the general practice is to assign the burden to the moving party. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2006).

Apparently recognizing that the district court's finding regarding incompetency is not supported by substantial evidence, Adams and the *amici curiae* invite this Court to establish a new rule that it should be the State's burden to demonstrate competency. This Court should decline that invitation, because Adams' proposed departure is not supported by the United States Supreme Court. In *Cooper v. Oklahoma*, 517 U.S. 348 (1996), the Court made clear that a defendant may bear burden to demonstrate incompetence, and that the applicable quantum of proof must not exceed a preponderance of the evidence.

Moreover, dismissal without prejudice inures to Adam's benefit, and compromises the victim's state constitutional rights, as discussed in Section A above. Therefore, the only reasonable approach is that Adams, as the party seeking to halt the trial process and either indefinitely delay or deprive the victim of their constitutional rights altogether, should bear the burden of proof.

C. The District Court's Decision Should Be Reversed Because it Departed From the *Dusky* Standard.

In 1960, the United States Supreme Court articulated the standard of incompetence to stand trial in *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788 (1960). A defendant must have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, as well

as a rational and factual understanding of the proceedings against him. *Id.* Every state has adopted a version of *Dusky* in the context of competency proceedings. Thomas Grisso, *Pretrial Clinical Evaluations in Criminal Cases: Past Trends and Future Directions*, 23 Crim. Just. & Behav. 90, 91 (1996). NRS 178.400 is consistent with the *Dusky* standard, defining an "incompetent" defendant as one who does not have the *present* ability to understand the nature of the charges, the nature and purpose of the court proceedings, or assist counsel in their defense. *Calvin v. State*, 122 Nev. 1178, 147 P.3d 1097, 1098 (2006). The use of the word "present" in Nevada's statute recognizes that competency can be a fluid condition.

If a district court's determination regarding competency is not supported by substantial evidence, it must be reversed. *Calvin v. State*, 122 Nev. 1178, 1182, 147 P.3d 1097, 1099 (2006) (citations omitted). "The court's discretion in this area, however, is not unbridled." *Melcor-Gloria* at 180.

"Competence [is] measured by the defendant's ability to understand the nature of the criminal charges and the nature and purpose of the court proceedings, and by his or her ability to aid and assist his or her counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding." *Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. 118, 122, 206 P.3d 975, 977 (2009); *see* NRS 178.400 (setting forth

Nevada's competency standard); *Calvin v. State*, 122 Nev. 1178, 1182, 147 P.3d 1097, 1100 (2006) (holding that Nevada's competency standard conforms to the standard announced in *Dusky*, 362 U.S. at 402). "When there is conflicting psychiatric testimony at a competency hearing, the trier of fact resolves the conflicting testimony of the witnesses." *Ogden v. State*, 96 Nev. 697, 698, 615 P.2d 251, 252 (1980) (citation omitted).

The applicable test regarding competency "must be 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." *Dusky, supra*.

Here, the evidence amply established that Adams has the ability to rationally consult with his lawyers, and the ability to understand the facts attendant to the criminal proceedings. Dr. Sarah Damas noted that Dr. Brouwers had observed that Adams avoided answering certain questions he did not want to answer by saying "I don't know" or "Mickey Mouse." I AA 63-64. She further noted that Dr. Brouwers' prior findings Adams could correctly identify the charge against him and applicable sentencing range. Dr. Brouwers also noted that Adams accurately defined a plea bargain. *Id*.

Dr. Damas' own observations echoed those of the other experts. During her evaluation, Adams identified the charges against him as felony child abuse and neglect. I AA 65. Adams articulated that he could be sentenced up to 20 years. Applying the *Dusky* factors, she further found that Adams could provide a rational description of the accusations against him, and understood he has a no contact order applicable to his girlfriend and the victim. I AA 65. He understood the role of his attorney, and articulated that the State's role was to "put him in prison." *Id.* Further, Adams understood the available types of pleas and their meanings. *Id.* He understood appropriate behavior and how to address inconsistencies in witness testimony with his attorney. *Id.*, 66.

Dr. Lia Roley noted that Adams' understanding of legal terms and courtroom roles had significantly improved during his time at Stein Forensic Facility Outpatient Restoration Services. I AA 56. He understood the charges against him, and the concept of probation. *Id.*, 57. She found that he understood the concept of plea bargains, and appropriate courtroom conduct. *Id.*, 58. 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.

Dr. Rami Abukamil's report made similar findings regarding Adams' understanding of the trial process, courtroom roles, sentencing, and plea bargains. I AA 48-49. 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.

In contrast, Dr. Sharon Jones-Forrester, hired by Adams, did not conduct a competency evaluation within the meaning of *Dusky*. Instead, prior to Adams' admission to the *Stein* program, she conducted a neuropsychological evaluation. I AA 10. 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.

Although the Decision and Order acknowledged *Dusky* as the appropriate standard, it did not *apply* that standard. The district court instead ignored the overwhelming evidence of competency from three experts in favor of almost exclusive focus on Dr. Jones-Forrester's testimony, despite her clear articulation that she was considering factors outside those of a competency evaluation. Importantly, the other three evaluators spent a considerable amount of time with Adams, as he was monitored in the *Stein* facility 24 hours per day, seven days per week. I AA 123. In contrast, Dr. Jones-Forrester only met with Adams twice.

Implicit in the Decision and Order is an application of a standard that exceeds the inquiry contemplated by *Dusky*. Moreover, the Decision and Order fails to articulate what consideration, if any, the district court gave to the opinions of three qualified mental health professionals whose evaluations were conducted consistent with *Dusky*. The district court erroneously and exclusively focused on Dr. Jones-Forrester's emphasis on raw intelligence, education, and attorney-client interaction. It premised its finding on Manson's intellectual deficiencies, rather than his progress at *Stein* or the factors mandated by *Dusky*.

III. CONCLUSION

Where a district court finds that a defendant is incompetent without a reasonable probability of restoration, its findings should be supported by substantial evidence. Moreover, the defendant should bear the burden of demonstrating his competency cannot be restored. To do otherwise unjustifiably compromises the State's interest in protecting the community, as well as the constitutional rights of victims in Nevada. In this case, the district court appears to have focused exclusively on a single expert's opinion rendered after application of a standard that exceeds the one articulated in *Dusky*. In contrast, the experts who applied the appropriate standard found that Adams was competent to stand trial. Because the district court erroneously applied a heightened standard and failed to articulate why the findings of the other experts are invalid, its Decision and Order should be reversed.

DATED: May 12, 2022.

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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 Georgia 14.

2. This brief exceeds the page- or type-volume limitations of NRAP 29(e), because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it exceeds the page-volume limitation by two pages, and it contains 2,429 words. The undersigned has filed a Motion to Exceed Page Limitation concurrent with the brief.

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

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: May 12, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on May 12, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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