

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

TARIQ MANSON,

Respondent.

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CASE NO: 82038

APPELLANT'S REPLY BRIEF

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

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ARGUMENT

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

In Manson’s Answering Brief, Manson doubles down on the district court’s decision to rely on a competency standard that goes beyond what is required under Nevada law. Specifically, he argues the district court relied on substantial evidence and was correct to find Manson incompetent for the following reasons: (1) Manson’s evaluators agreed that he suffered from intellectual disabilities, (2) Dr. Jones-Forrester’s Neuropsychological Evaluation with Manson supported a finding of incompetency, (3) neither the district court nor Dr. Jones-Forrester applied too high

a standard in evaluating Manson's competency, and (4) the licensed Stein evaluators were not credible. RAB at 46-64. However, these arguments fail.

Despite Manson's attempts to complicate the issue raised in this case, the State's argument is simply that the district court, as well as Dr. Jones-Forrester in her evaluation of Manson, applied a standard for competency that went beyond what is required under Nevada law. In Nevada, the standard for determining whether a defendant is competent to stand trial is as follows:

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.

In the instant case, after Manson was found competent pursuant to Dusky by three (3) licensed Stein evaluators, Manson challenged such findings and the district court set the matter for a Challenge Hearing. I AA 90-94. At the Challenge Hearing all three (3) of the licensed Stein evaluators, Dr. Bossi, Dr. Sussman, and Dr. Damas testified and discussed the evidence that supported their findings of competency. I AA145, 176; II AA 217. Manson called Dr. Jones-Forrester, who had completed both a neuropsychological evaluation and a competency evaluation with Manson

after he was found competent, to testify about her findings underlying her decision to find that Manson was not competent to stand trial. I AA 99. Despite Dr. Bossi, Dr. Sussman, Dr. Damas, and, even to some extent the defense's witness, Dr. Jones-Forrester discussing overwhelming evidence of Manson's competency under the Dusky standard, the district court found that Manson was incompetent without the possibility of restoration and dismissed his charges without prejudice. II AA 282.

Manson spends most of his Answering Brief discussing how the district court appropriately relied upon Dr. Jones-Forrester's findings that Manson could not meet the Dusky prongs. However, Dr. Jones-Forrester's testing methods went beyond a normal competency evaluation as she conducted, in addition to the routine competency evaluation, a neuropsychological evaluation. Dr. Jones-Forrester used the findings from such neuropsychological evaluation to determine Manson's competency. I AA 72, 101. This resulted in a finding of incompetency that was based on a test that set forth "revolutionary" parameters. While the law provides district courts with the discretion to weigh conflicting competency findings, the law does not permit district courts to adopt a standard for competency higher than what is permitted under law. Calvin v. State, 122 Nev. 1178, 1183, 147 P.3d 1097, 1100 (2006); Calambro v. Second Jud. Dist. Ct., 114 Nev. 961, 971, 964 P.2d 794, 800 (1998).

Despite, Manson's argument that the licensed Stein evaluators lacked credibility, he cannot deny that each found issues with Dr. Jones-Forrester's findings—the most important being that she applied a standard that went beyond what is required under the law. For example, while Dr. Bossi agreed that Manson had demonstrated some limitations, he did not agree with Dr. Jones-Forrester's assessment that his limitations rose to the level of preventing him in the legal process. I AA 155. Indeed, Dr. Bossi explained that he was concerned that throughout Dr. Jones-Forrester's testimony at the Challenge Hearing, she explained that her findings of incompetency were based on Manson having “a basic but concrete or an accurate but concrete understanding of various topics.” I AA 155. Further, he explained that he was concerned with Dr. Jones-Forrester's use of the term nuanced in her report when referencing her findings which led her to find that Manson was incompetent. I AA 155. He even highlighted Dr. Jones-Forrester's discussion regarding Manson's understanding of his charges and their nature to show how she was using a heightened standard for which he did not agree. I AA 155.

In Dr. Jones-Forrester's report, she explained that one of the reasons she believed Manson did not understand his charges was because he could articulate the difference between lewdness and sexual assault as well as his general misunderstanding regarding general concepts of sexual information. I AA 73. Dr. Bossi explained that he disagreed with this information meaning that Manson

misunderstood his charges and their nature for competency purposes as he explained:

To me, you know, for example if an individual understands that they're charged with a sexual offense but they understand that that was against the law, whether they know lewdness versus sexual assault does not mean that they are unable to understand their charges for example.

I AA 155. Dr. Bossi ultimately found that Dr. Jones-Forrester was looking for Manson to demonstrate a “high level, complex level, a nuanced level” of understanding, a standard that is not required for a finding of competency. I AA 155.

Similarly, Dr. Sussman took issue with Dr. Jones-Forrester’s findings. I AA 182. According to Dr. Sussman, Dr. Jones-Forrester’s report had demonstrated a “revolutionary alteration of the way competency determinations go.” I AA 182. Dr. Sussman elaborated that Dr. Jones-Forrester’s references to Borderline Intellectual Functioning as well as the other cognitive findings should not dictate a finding of incompetency as individuals that have cognitive defects could be found competent. I AA 183. Indeed, he explained that Dr. Jones-Forrester’s report was attempting to have Manson’s alleged cognitive deficits stand on their own, which was a “revolutionary new way of trying to shoehorn incompetency.” II AA 203. Regardless, he found that Dr. Jones-Forrester’s finding of Manson suffering from a neurocognitive disorder was unsubstantiated. II AA 215.

Likewise, Dr. Damas testified that she too had concerns with Dr. Jones-Forrester’s findings. II AA 228. Indeed, Dr. Damas similarly took issue with Dr.

Jones-Forrester's concern with Manson not fully understanding of the concept of "consent." II AA 228. In her report, Dr. Jones-Forrester expressed concern regarding Manson's understanding of his charges and their nature because he did not understand the meaning of the word "consent." I AA 74. More importantly, she had concern that Manson only "concretely" understood that engaging in sexual activity with someone under age was illegal, but could not explain why it was a crime. I AA 74. Dr. Damas found that Manson had in fact demonstrated that he understood the basis of consent and that he committed a crime based on the victim's age. II AA 228. In fact, Dr. Damas pointed out that Manson was not educated specifically on consent, but he had the capacity to learn as evidenced by his legal test score increase from thirty (30) percent in his pre-test to approximately eighty (80) percent after he had attended competency restoration classes. II AA 229.

To the extent Manson argues that the licensed Stein evaluators were less thorough as well as lacked credibility, and therefore the district court was justified in setting aside their findings of competency because the evaluators did not consider how Manson's deficits would affect him during trial, his argument fails. RAB 49-64. Indeed, each of the reports as well as the evaluators testimony belies Manson's argument as each report reveals that Manson's competence at trial was contemplated. I AA 51-68. Further, the Stein evaluators took into account Manson's Borderline Intellectual Functioning diagnosis and examined his records, including

his childhood background. Even a plain reading of the Stein evaluators' reports reveals as much. I AA 50-67. Accordingly, the Stein evaluators did conduct a thorough evaluation.

In addition to doubling down on Dr. Jones-Forrester's neuropsychological evaluation of Manson, Manson supports the district court's concern that the Stein evaluators failed to observe Manson with his attorney, however such a concern should not change the analysis. RAB 62-64. However, as Dr. Bossi explained, he did not need to conduct such an interview as there was sufficient information presented for him to determine Manson's competency, which is common in competency evaluations. I AA 158.

Additionally, Manson argues that the State was not able to refute the evidence that Manson's "understanding could diminish over time." RAB at 57. By making such argument, Manson neglects to mention that the Stein evaluators did see improvement in Manson's ability to recall information, which demonstrated Manson's competency and satisfaction of the competency standard. II AA 219, 224-25, 229. Further, to the extent Manson argues that he did not understand his charges because Dr. Jones-Forrester found that he had no concept of the relationship between consent and age, the State refuted this information and found that Manson understood the concept of consent and that he committed a crime based on the victim's age. II AA 228.

To the extent Manson relies on United States v. Hoskie, 950 F.2d 1388, 1392 (9th Cir. 1991), to argue that Manson could not be found competent because of his inability to retain information, his argument still fails. Indeed, an important point of the Hoskie Court's analysis regarding the defendant's competency was that he failed to retain information for more than five (5) minutes. Here, there was a month between Manson's Stein evaluations and Dr. Jones-Forrester's second evaluation which, as discussed *supra*, went beyond what is required under Nevada law. I AA 51, 58, 64, 72. Further, in Hoskie, the defendant's knowledge completely evaporated, whereas here, Manson may have suffered from slippage of information at the most. Id. However, it is hard to gauge such slippage when a heightened level of competency was used by the evaluator.

Furthermore, despite Manson's apparent argument that no accommodation could be made to maintain Manson's competency, 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).¹ 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, the district court exercised its discretion to rely on a heightened standard of competency to find that Manson could not be accommodated. Accordingly, the district court abused its discretion as there was substantial evidence of Manson's competency and there were measures that could ensure his competency at trial. Therefore, dismissal of Manson's charges without prejudice was not warranted and the district court's decision should be reversed.

CONCLUSION

For the reasons set forth above, the State respectfully requests this Court reverse the district court's Amended Order and Decision and that the matter be remanded for further proceedings.

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¹ The State's citation to this rule is not an attempt to argue that defense counsel violated such rule, but instead is being offered to demonstrate a counsel's duty to his client.

Dated this 20th day of August, 2021.

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)(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 1,952 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 20th day of August, 2021.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 20, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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