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**Sims v. Dist. Ct., 125 Nev. Adv. Op. No. 13
(April 30, 2009)¹**

Criminal Law- Presentation of Evidence in Competency Hearing

Summary

Petitioners filed writs of mandamus challenging the district court orders denying petitioners' requests to present evidence during competency hearings.

Disposition/Outcome

The Nevada Supreme Court held that defense counsel may introduce independent competency evaluations if they are relevant to the issue of the defendant's competency and their probative value is not substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Accordingly, because petitioners' independent competency evaluations were relevant, and their probative value was not substantially outweighed by the aforementioned considerations, the Court granted the petitions.

Factual and Procedural History

In early 2007, petitioner Caroline Marie Sims was charged with one count each of home invasion while in possession of a deadly weapon, carrying a concealed weapon, and burglary while in possession of a deadly weapon. Petitioner Kanohea Samuel Heaukulani was charged with one count of open or gross lewdness. After these charges were filed, defense counsel raised concerns at the justice court level regarding the petitioners' competency to stand trial.

The justice court bound petitioners to respondent Eighth Judicial District Court Judge Jackie Glass (Department 5) for a resolution of the competency issues. As such, the court appointed two psychologists to evaluate the petitioners. After, the court reviewed the reports and held that the petitioners were competent to stand trial. Thereafter, defense counsel for petitioners ordered independent competency evaluations for each petitioner. The results from the independent examinations were unanimous in their conclusion that petitioners were not competent to stand trial.

Upon receiving the results of the independent examinations, defense counsel for petitioners again raised the issue of competency to stand trial. The trial judge transferred the competency matters back to Department 5, as "all competency matters are assigned to a particular district court judge."² Court-appointed competency examiners then examined petitioners, again. Finally, defense counsel moved to admit the results from the independent examinations; however, the motions were denied.

¹ By Kristopher Zeppenfeld

² *Ferguson v. State*, 192 P.3d 712,718 (Nev. 2008).

Discussion

The crux of this issue is in the interpretation by the parties of NRS 178.415(3). Petitioners' writs concern whether defense counsel is permitted under the statute to introduce independent competency evaluations during the competency hearing. The Court found that because statutory interpretation is a matter of law, it reviewed Department 5's interpretation de novo.³

I. Plain Language of Statute

The Court must first look to the statute's plain language.⁴ If the plain language of the statute is either ambiguous or if the plain meaning of the statute was clearly not intended by the Legislature, the Court will look to the legislative intent.⁵ NRS 178.415(3) provides that, upon receiving the competency reports from the court-appointed competency examiners, the court "shall permit counsel for both sides to examine the person or persons appointed to examine the defendant."⁶ Additionally, "the [parties] may: (a) Introduce other evidence including...evidence related to treatment to competency and the possibility of ordering the involuntary administration of medication; and (b) cross-examine one another's witnesses."⁷

Here, the Court found the language of the statute to be plain and unambiguous. To illustrate this finding, the Court opined that the language in no way limits the prosecuting attorney's or defense counsel's ability to introduce evidence during a competency hearing. Furthermore, the plain meaning is evidenced by the phrases "other evidence" and "without limitation," which denote legislative intent.⁸

The plain language of the statute notwithstanding, Department 5 argued that the court must look to legislative intent for guidance. The Court recognized that the plain and unambiguous language indicated no need to look to legislative intent, nonetheless, the Court acquiesced to respondent's contention and still found no intent beyond that which is clearly delineated in the plain language of the statute.

II. Probative Value of Independent Evaluations

Next, the Court evaluated the issue of whether petitioners' independent competency evaluations were properly excluded as an undue delay, waste of time, or needless presentation of cumulative evidence. The Court applied the analysis used in *Calvin v. State*.⁹

³ *Firestone v. State*, 83 P.3d 279,281 (Nev. 2004).

⁴ *Id.*

⁵ *Id.*; see also *State v. State, Employees Assoc.*, 720 P.2d 697,699 (1986) (determining that "plain and unambiguous" language within a statute "must be given effect" unless from the language of the statute "it clearly appears that such was not so intended").

⁶ NEV. REV. STAT. § 178.415(3)(a)-(b) (2007).

⁷ *Id.*

⁸ *Alsenz v. Clark Co. School Dist.*, 864 P.2d 285,287 (Nev. 1993) (word "including" is generally given expansive reading, even without additional language of "without limitations").

⁹ 147 P.3d 1097 (Nev. 2006).

In *Calvin*, the Court concluded that while the district court has the discretionary authority to admit or exclude evidence during the competency hearing, the competency process will be much better “served when the district court and any appointed experts consider a wide scope of relevant evidence at every stage of the competency hearing.”¹⁰ However, even if the evidence being proffered is relevant, the district court may still exclude the evidence “if its probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”¹¹

Here, Department 5 determined that the competency evaluations were relevant; however, it determined that the probative value was substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Department 5 claimed the reports were cumulative because the court had already received competency reports from court-appointed examiners.

The Court concluded that Department 5’s line of reasoning was both an arbitrary and capricious exercise of discretion, because accuracy in the competency record is much better served when the district court considers a wide scope of relevant evidence. The independent evaluations were relevant. Furthermore, as the report was a single evaluation, consideration of the report will not cause an undue delay. Moreover, the independent evaluations will not waste time or constitute needless presentation of cumulative evidence.

Conclusion

The Court held that petitioners are entitled to introduce their independent competency evaluations during the competency hearing since the evaluations are relevant to the issue of competency and the probative value is not outweighed by NRS 48.035(2). Accordingly, the Court granted petitioners’ writs of mandamus instructing the district court to consider petitioners’ independent competency evaluations at their competency hearings.

¹⁰ *Id.* at 1183.

¹¹ NEV. REV. STAT. § 48.035(2) (2007).