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Ralph Edmond Goad v. State of Nevada, 137 Nev. Adv. Op. 17 (Apr. 29, 2021)

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APPEAL FROM CONVICTION OF INCOMPETENT CRIMINAL DEFENDANT

SUMMARY

The United States and Nevada Constitutions forbid the prosecution of a criminal defendant who is mentally incompetent. Doing so violates the defendant's due process rights because it prevents the defendant from having a fair trial. A criminal defendant has a procedural due process right to a hearing to evaluate whether he is fit to stand trial if there are sufficient doubts about his competency. Further, Nevada trial courts have an affirmative duty to order a competency hearing if there is any evidence before the court raising reasonable doubt about a criminal defendant's competency. If a criminal defendant is denied the right to such a hearing, the Nevada Supreme Court often remedies the violation by reversing the conviction.

This case poses three issues related to competency of criminal defendants. First, does reasonable doubt exist when a defendant is deprived of an unknown psychoactive medication during trial and thereby becomes debilitated? Second, must a trial court consider evidence of incompetence presented in pretrial matters over which a different judge presided? Third, is remanding the case to the trial court to determine whether the defendant was incompetent during trial an acceptable remedy for violating a defendant's right to a competency hearing? The Nevada Court of Appeals answered all three questions in the affirmative.

FACTS AND PROCEDURAL HISTORY

Ralph Goad's friend, Theodore Gibson, was found dead in his apartment on February 13, 2019, from 250 stab wounds. The cash in Gibson's wallet had also been stolen. Police found Goad's DNA on the handle of a pair of scissors with Gibson's blood on them, in Gibson's apartment, and on Goad's clothing. Goad was also seen entering and exiting Gibson's apartment several times following the last day Gibson was seen alive. Goad was charged with murder with the use of a deadly weapon. During his interrogation, Goad told the police about his prior mental health hospitalizations, how doctors had struggled to diagnose his mental conditions, and that he had been prescribed several psychoactive medications.

Two different judges presided over Goad's case: the first for pretrial matters and the second for the trial. The trial judge admitted that he was not familiar with what had happened in the case before it was transferred to his court. The court and counsel discussed the interrogation transcript outside the presence of the jurors on the first day of trial and again after opening statements when defense quoted an inadmissible line from the transcript. On the third day of trial, the court again discussed Goad's condition outside the presence of the jury. Court staff informed the court that Goad had not received his medication that day, could not go without it, and had to be transported back to the sheriff's office to take the medication. Defense counsel told the court that Goad's physical condition had been degrading, and the State noted that his appearance was objectively concerning.

¹ By Maggie DiFederico.

On the fourth day of trial, Goad refused to interact with defense counsel, and when the judge questioned him from the bench, he gestured that he could not speak. However, he did not affirm that he wished to proceed with trial. Court staff also informed the judge that the jail infirmary had medically cleared Goad for trial. The court proceeded with trial without addressing the factors for determining incompetence.² The jury found Goad guilty of murder with a deadly weapon, and the district court sentenced him to life in prison without the possibility of parole and a consecutive sentence of 36 to 240 months for the use of a deadly weapon. At sentencing, the court commented that Goad had nearly been involuntarily committed because of his mental health on five separate occasions. Goad appealed his conviction, asserting that the district court violated his federal and state due process rights by not ordering a competency hearing.

ANALYSIS

Goad argues that the district court should have ordered a competency hearing because reasonable doubt about his competency to stand trial was raised when he was denied a necessary medication, refused to interact with his attorneys, and could not speak. He asserts that the court's canvas of him on the fourth day of trial did not dispel the reasonable doubt. The State counters that a competency hearing was unnecessary because the court's canvassing of Goad was sufficient to dispel reasonable doubt, considering his consent to proceeding with trial and the infirmary's medical clearing.

Due process

The Court of Appeals reviewed the district court's decision not to order a competency hearing for abuse of discretion.³ A court abuses its discretion and violates the defendant's due process rights if it fails to order a competency hearing when a reasonable doubt about the defendant's competency exists.⁴ A defendant is competent if he can consult with his lawyer with a reasonable degree of rational understanding and has both a rational and factual understanding of the proceedings against him.⁵ Nevada's competency procedure requires the court to suspend a trial if *any* doubt arises about the defendant's competence and hold a hearing to determine whether further competency proceedings are warranted under NRS 178.415.⁶

Nevada's competency statutes

NRS 178.405 and NRS 178.415 provide a framework for courts to follow to ensure compliance with the due process reasonable doubt standard for competency. The statutes will aid the court in determining whether a competence hearing is necessary and whether the defendant is

² "[I]ncompetent means that the person does not have present ability to (a) [u]nderstand the nature of the criminal charges against the person; (b) [u]nderstand the nature and purpose of the court proceedings; or (c) [a]id and assist the person's counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding." NEV. REV. STAT. § 178.400(2) (2007).

³ Olivares v. State, 124 Nev. 1142, 148, 195 P.3d 864, 868 (2008).

⁴ *Id.*

⁵ Melchor-Gloria v. State, 99 Nev. 174, 179–80, 660 P.2d 109, 113 (1983).

⁶ Scarbo v. Eighth Jud. Dist. Ct., 125 Nev. 118, 121–22, 206 P.3d 975, 977 (2009); Olivares, 124 Nev. at 1149, 195 P.3d at 869.

incompetent.⁷ However, even if the district court complied with NRS 178.405(1), the Court of appeals is required to find error if a defendant did not receive a competency hearing when reasonable doubt existed as to his competency.

Procedural due process

In Nevada, a court is constitutionally compelled to order a competence hearing whenever there is “substantial evidence” that the defendant is incompetent to stand trial.⁸ The court should evaluate evidence of incompetence in the aggregate, and once there is any evidence of incompetence, the court must order a competency hearing *sua sponte*.⁹ Failure to order a hearing is an abuse of discretion and a denial of due process.¹⁰

Reasonable doubt

Reasonable doubt as to Goad’s competence existed on the third and fourth days of trial. Because the district court did not hold a competency hearing, it violated Goad’s due process rights. The court was required to consider the information in the interrogation transcript concerning Goad’s past mental health hospitalizations, medications, and failed diagnoses and failed to do so. The district court was also required to consider Goad’s behavior at the trial.¹¹ The district court must consider all evidence before it to safeguard the substantive due process right not to stand trial while incompetent. The Court of Appeals cannot permit a trial court to overlook evidence because doing so would decrease the likelihood that a court will find reasonable doubt as to a defendant’s competency. The right to a competency hearing would then depend upon the trial court’s thoroughness in reviewing the record.

When viewed in the aggregate, the evidence before the district court presented a reasonable doubt as to Goad’s competence. The crime Goad was charged with (stabbing his friend 250 times and then repeatedly visiting Gibson’s apartment after doing so), Goad’s history of mental health problems and psychoactive medication use, denying Goad his medication, and that Goad was debilitated without his medication all suggested that he was either deprived of his prescriptions, suffered withdrawals, or was adversely affected by not taking his medications. Goad’s circumstances presented a reasonable doubt as to whether Goad was competent on the third day of trial. Goad’s competency was even more questionable on the fourth day of trial, as he could not speak and suddenly would not acknowledge defense counsel.

Although the State cites evidence that it contends contradicts reasonable doubt, such evidence does not relieve the court of its duty to order a competency hearing. Reasonable doubt of competence cannot be dissipated by conflicting evidence.¹² Thus, the fact that the jail infirmary medically cleared Goad for trial and Goad’s nonverbal responses did not dispense of the need for a competence hearing.¹³ Further, Goad’s nonverbal response that he wanted to proceed to trial and

⁷ See *Olivares*, 124 Nev. at 1149, 195 P.3d at 869.

⁸ *Melchor-Gloria*, 99 Nev. at 180, 660 P.2d at 113.

⁹ *Drope v. Missouri*, 420 U.S. 162, 179–80 (1975); *Krause v. Fogliani*, 82 Nev. 459, 463, 421 P.2d 949, 951 (1966).

¹⁰ *Melchor-Gloria*, 99 Nev. at 180, 660 P.2d at 113.

¹¹ See *Drope*, 420 U.S. at 180.

¹² *Melchor-Gloria*, 99 Nev. at 180, 660 P.2d at 113.

¹³ See *Pate v. Robinson*, 383 U.S. 375, 385 (1966).

defense counsel's request that the judge canvas Goad did not waive Goad's right to a competency hearing, because a defendant cannot waive his right to a competency hearing.¹⁴ A defendant does not waive his right to a competency hearing by failing to specifically request one.¹⁵

Thus, federal due process and the Nevada Constitution required the district court to order a competency hearing *sua sponte*. The Court of Appeals cautioned that its conclusion that there was sufficient evidence of a reasonable doubt as to Goad's competence does not mean that it supports or opposes an inference that Goad actually was incompetent during his trial. The district court was tasked with deciding whether any of the evidence gave rise to a reasonable doubt about Goad's competency. Thus, the Court of Appeals did not resolve any matter concerning Goad's competency other than the fact a reasonable doubt existed.

Remedy

Each time the Nevada Supreme Court has found that a district court failed to order a competency hearing when one was necessary, it has reversed the defendant's conviction and ordered a new trial. However, the Nevada Supreme Court has not ruled that reversal and remand for a new trial are required. Appellate courts have remedied district court's failures to order a competency hearing by ordering a retrospective, or *nunc pro tunc*, competency hearing.¹⁶ A retrospective hearing avoids the severe costs imposed by ordering a new trial for a violation that might not have affected the guilt and penalty verdicts.¹⁷

Before an appellate court can order a *nunc pro tunc* hearing, the district court must decide on remand that a meaningful retrospective competency hearing is feasible.¹⁸ A retroactive hearing is feasible if the court can reliably determine, based on the available evidence, the defendant's competence at or near the time the reasonable doubt arose.¹⁹ Feasibility depends on the following factors: "(1) [t]he passage of time, (2) the availability of contemporaneous medical evidence, including medical records and prior competency determinations, (3) any statements by the defendant in the trial record, and (4) the availability of individuals and trial witnesses, both experts and non-experts, who were in a position to interact with [the] defendant before and during trial as well as any other facts the court deems relevant."²⁰ The trial court's focus should be whether the hearing will provide the defendant with a fair opportunity to prove his incompetence, not whether evidence exists by which the trier of fact could make the determination.²¹ The burden is on the prosecution to convince the trial court, by a preponderance of the evidence, that a retrospective hearing is feasible.²²

In Goad's case, vacating the conviction and ordering a *nunc pro tunc* competency hearing is an appropriate remedy for the district court's failure to order a competency hearing. If the district

¹⁴ *Kraus*, 82 Nev. at 463, 421 P.2d at 951.

¹⁵ *See Pate*, 383 U.S. at 384.

¹⁶ *See Odle v. Woodford*, 238 F.3d 1084, 1089–90 (9th Cir. 2001).

¹⁷ *People v. Lightsey*, 279 P.3d 1072, 1102 (Cal. 2012).

¹⁸ *See Odle*, 238 F.3d at 1089–90.

¹⁹ *Lightsey*, 279 P.3d at 1104–05.

²⁰ *Id.* at 1105.

²¹ *Id.*

²² *Id.*

court determines that a retroactive hearing is not feasible, the conviction will remain vacated, and the district court will have to conduct a new trial.²³ If the district court determines that a hearing is feasible, it should conduct the hearing in accordance with NRS 178.415. If the district court conducts a retroactive hearing and concludes that Goad was competent to stand trial, the conviction will be reinstated, but if the district court finds that Goad was not competent, it must conduct a new trial.²⁴

CONCLUSION

Because trial courts have a duty to ensure that criminal defendants are competent to stand trial, they have an affirmative duty to order a competency hearing *sua sponte* where there is a reasonable doubt as to the defendant's competency. To comply with this duty, a trial court must follow Nevada's statutory competency procedures and also must consider all evidence of incompetence before it, regardless of whether it was presented pretrial or during trial. An appellate court may remedy a trial court's failure to order a competency hearing when one was necessary by ordering the trial court to conduct a retrospective hearing to determine whether the defendant was competent during his trial. However, the trial court must first determine on remand that a retrospective hearing is feasible.

TAO, J., concurring in part and dissenting in part:

The majority's solution is one that Goad never requested, one that the Nevada Supreme Court has announced that district courts cannot order, one that does not apply to the facts of this case, and one that orders the district court to assess facts that Goad does not assert to be true. The majority concedes that the record does not contain sufficient information to assess whether Goad was incompetent on day four of his trial; for instance, there is no evidence about his precise diagnosis or what medication he took, and he was never examined by a psychologist during the trial.

The scarcity of evidence is important because legal incompetence is a much higher standard than mental illness. Incompetence is measured by the defendant's ability to understand the nature of the charges against him, the nature and purpose of court proceedings, and by his ability to assist counsel in his defense with a reasonable degree of rational understanding. Competency is not determined by whether a defendant has a mental illness.²⁵ Diagnosis of a mental illness alone does not raise reasonable doubt about a defendant's competence to be tried.²⁶ While some people do have a mental illness that is so severe that it renders them legally incompetent, the link between the two is too tenuous to say that mental illness can be linked to legal incompetence.²⁷

The remedy for this lack of evidence is not a retrospective competency hearing, because ordering one here turns the hearing into an open-ended investigation where the district court will have to seek evidence outside of the record rather than a focused judicial inquiry. And it directs

²³ *See Id.* at 1120.

²⁴ *See* NRS 178.420; *Lightsey*, 279 P.3d at 1120.

²⁵ *Calvin v. State*, 122 Nev. 1178, 1182–83, 147 P.3d 1097, 1100 (2006).

²⁶ *Robinson v. State*, 301 So. 3d 577 (Miss. 2020).

²⁷ *See Id.* at 582.

the court to do so despite the fact that Goad has never requested such a hearing. The majority vacates Goad's murder conviction not because the district court committed legal error in its evaluation of the evidence on the record, but rather because some other evidence might exist that was overlooked by the parties and never presented to the court.

Requiring a *nunc pro tunc* hearing when it is uncertain whether concrete evidence of Goad's incompetency even exists risks transforming his trial from an adversarial proceeding to an inquisitorial one where the judge conducts the investigation and decides what should matter to the parties. This is not how our justice system is supposed to work. When there is not enough evidence on the record to warrant reversal, the solution is to presume that the appellant has failed to meet his burden of proving he is entitled to relief. While the record here does contain ample evidence of mental illness, it contains none that Goad has ever been legally incompetent. Further, he never claimed to be incompetent at any time during his trial, did not assert an insanity nor a diminished capacity defense, and his counsel never told the district court that Goad was incompetent to stand trial. In reversing his conviction, the majority is essentially concluding that Goad's defense counsel was incompetent.

Goad admits that he has gone long periods of his life without taking medication, and yet he never claimed to be legally incompetent. And on appeal, his counsel expressly conceded that Goad has never been diagnosed or adjudicated as incompetent in his life, even when he was medication free. Goad did not even assert his incompetence in his appellate brief. There is no evidence that Goad was ever legally incompetent to stand trial for murder, even without medication. The majority remands Goad's case to the district court for failing to "aggregate" evidence that Goad's defense counsel never presented and do not claim actually exists.

The scope of the majority's remedy – a retrospective hearing – is much more narrow than the majority implies. Its purpose is to answer the question of legal competence, not to conduct an open investigation into a defendant's mental health. Further, the remedy cannot be granted by a trial court with a post-verdict motion for a new trial; it is solely an appellate remedy. The remedy applies only to this court and this case. District courts may not employ it and the Nevada Supreme Court is free to disregard it. And because this is solely an appellate remedy, reasonable doubt will have to be determined by the appellate court, despite the fact that reasonable doubt regarding competency is a question of fact within the trial court's discretion and which an appellate court is required to defer to the trial court.²⁸ Therefore, the proper inquiry before the Court of Appeals is whether there is substantial evidence to support the district court's conclusion that no reasonable doubt concerning Goad's competency existed.

The Court of Appeals reviews a district court's decision to order a competency hearing for abuse of discretion.²⁹ While Goad is mentally ill, there is little evidence that he was incompetent during his trial. He even admits that there is no evidence that he has ever been suspected, diagnosed, or adjudicated as legally incompetent at any time in his life. Neither he nor his counsel ever questioned his competency. The district court resolved several pretrial motions, and none raised any speculation as to his competency. Goad's competency was never questioned at trial or

²⁸ *Melchor-Gloria*, 99 Nev. at 180, 660 P.2d at 113; *Ryan's Express v. Amador Stage Lines*, 128 Nev. 289, 299, 279 P.3d 166, 172–73 (2012).

²⁹ *Olivares*, 124 Nev. at 1149.

during the twenty-one months between his trial and this appeal. Further, he now only contends that he was incompetent for the first half of the fourth day of this trial. There is substantial evidence supporting the district court's conclusion that it did not need to order a competency hearing.

The majority's remedy of remanding Goad's case to the trial court to conduct a retrospective hearing because evidence of incompetence may come up is just not how the legal test works. The district court is not supposed to conduct a full hearing unless there is a reason to believe there is something to find. The district court was within its bounds to decide that the threshold was not met here and that a competency hearing was not needed. The standard of appellate review is abuse of discretion which requires the Court of Appeals to evaluate whether there was substantial evidence to support the district court's factual conclusion as to Goad's competency. The Court of Appeals has never assessed "substantial evidence" by speculating about evidence that is not in the record and was not presented to the trial court. "Substantial evidence" is assessed by evaluating the evidence that is actually on the record and determining whether it justifies the trial court's decision.

The bottom line is the question of whether Goad was incompetent during trial is a factual one which the district court answered based on the record before it and personal interactions with Goad. The Court of Appeals must defer to the district court's observations, and whenever its factual findings are supported by substantial evidence, the Court of Appeals must affirm its decision.