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**In re: D.C., Jr., 140 Nev. Adv. Op. 25 (Apr. 18, 2024)**

Alyson Smith

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A JUVENILE FACING THE POSSIBILITY OF PROSECUTION AS AN ADULT ON SERIOUS CRIMINAL CHARGES DUE TO CERTIFICATION MUST MEET THE ADULT CRIMINAL COURT STANDARD FOR COMPETENCE, AND THIS DETERMINATION MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE.

**Summary**

In order for a juvenile defendant to be found competent to proceed to a certification hearing, courts must consider the full context of the juvenile's case and the juvenile must understand what the stakes are should if they are certified for proceedings in adult criminal court. Such a finding of competency must be supported by substantial evidence.

On appeal from a district court order certifying a juvenile for criminal proceedings as an adult, the Nevada Supreme Court considered whether the juvenile court applied an appropriate standard to determine the juvenile's competence, and whether the determination was supported by substantial evidence. The Nevada Supreme Court ruled that it was an error to proceed to the certification hearing because the juvenile court did not properly resolve the juvenile's competency challenge beforehand.

**Background**

This is an appeal from a determination of competency and district court order certifying a juvenile for criminal proceedings as an adult. Appellant D.C., Jr. was certified for prosecution as an adult on charges of murder, attempted murder, and robbery. These charges were the result of three separate instances during which an assailant robbed victims at gunpoint, fatally shooting two of them and wounding the third.

Before proceeding to the certification hearing, D.C. requested a competency determination because at the time of the offense, D.C. was fourteen years old and had an IQ of 66. D.C. was evaluated by three experts who all gave conflicting and equivocal testimonies as to D.C.'s understanding of the proceedings and ability to assist counsel. Following the initial finding of incompetency and subsequent competency-restoration sessions, the juvenile court declared D.C. competent to proceed. In doing so, the juvenile court did not address the conflicting expert testimonies and applied juvenile-court-specific competency standards. The juvenile court orally pronounced D.C. competent to proceed and did not memorialize its competency determination in writing.

The certification hearing took place one month after the competency hearing. The juvenile court considered the factors established for discretionary certification in *In re Seven Minors*<sup>2</sup>, finding prosecutive merit on all counts and certified D.C. for criminal proceedings as an adult.

On appeal, D.C. argued that a finding of competency in juvenile court requires competency to stand trial and that the juvenile court improperly created a lower competency standard by not assessing his competency to stand trial. The State responded that the juvenile court appropriately found D.C. competent using the standard from *Dusky v. United States*<sup>3</sup> and

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<sup>1</sup> By Alyson Smith.

<sup>2</sup> 99 Nev. 427, 664 P.2d 947 (1983).

<sup>3</sup> 362 U.S. 402 (1960).

that the finding was supported by substantial evidence. D.C. further argued that NRS 62D.140 requires the juvenile court to assess a juvenile's competency under the circumstances of the particular case. The appeal of the certification order brings with it the competency determination because if D.C. was incompetent, the juvenile court could not proceed to the certification hearing.

The Court considered the level of ability or comprehension that a juvenile must have to be found competent to proceed, whether the juvenile court correctly considered the facts and circumstances of the case when it found D.C. competent, and whether substantial evidence supported that finding.

### **Discussion**

The Nevada Supreme Court reviewed the district court's competency determination for abuse of discretion, but owed no deference to legal error to a determination that is unsupported by substantial evidence. In reviewing the competency determination, the Court considered the test for competency under *Dusky*; Nevada's adult competency statute, NRS 178.400(2); and Nevada's juvenile competency statute, NRS 62D.140. The Court read NRS 62D.140 to require the juvenile court to assess the child's competency to proceed under the circumstances of the particular case.

In considering the level of ability or comprehension the child must have to be found competent to proceed, the Court held that the facts and circumstances of a case affects the level of ability that a juvenile must have to be competent under *Dusky* and NRS 62D.140. It is important for juvenile courts to consider the circumstances of each particular case because where the punishment stakes are equal to those facing adult criminal defendants, it is required that a juvenile be found competent at the level of an adult criminal defendant. As such, a juvenile facing certification must understand the right to a jury trial in adult criminal court and be able to make trial-related decisions. This is an important distinction because in juvenile court, there is no right to a jury trial.

Because D.C. faced high-stakes criminal prosecution with the possibility of severe punishment, it was error for the juvenile court to assess D.C.'s competency by considering only what he would face in juvenile court, rather than considering the consequences and decisions D.C. would have to make if certified to proceed in adult criminal court. Due to the seriousness of D.C.'s charges, he was only competent to proceed to the certification hearing if he met the NRS 62D.140 prongs at the level of a competent adult defendant.

By measuring D.C.'s competency against juvenile norms, rather than against the adult criminal context D.C. would face if certified, the district court applied an incorrect juvenile court standard in determining D.C.'s competency. The Court went on to hold that even if D.C.'s competency was commensurate with that of a competent adult, such a finding was not supported by substantial evidence. None of the experts established that D.C. was competent to proceed in adult criminal court as to the second and third prongs of NRS 62D.140, and the juvenile court failed to make findings on the conflicting evidence of competency.

The experts who determined that D.C. was competent did so based on suspicions that D.C. was malingering and putting forth less than optimal effort. The juvenile court did not make findings on D.C.'s efforts or potential malingering during competency evaluations, nor did the court state which testimonies or conclusions it relied upon in its determination. The court's failures in resolving these uncertainties prevented the Nevada Supreme Court from engaging in meaningful review of the determination and from concluding that the decision was based on

substantial evidence. The juvenile court further failed to address the experts' recommendations for additional education to ensure continued competency, mandating vacatur and remand.

### **Conclusion**

In vacating the certification order and the competency determination, the Nevada Supreme Court remanded for the juvenile court to reassess D.C.'s competency. The Court found that the juvenile court applied an incorrect standard in determining D.C.'s competency, and did not support its determination with adequate findings or substantial evidence. The Court held that a juvenile facing the possibility of prosecution as an adult on serious criminal charges as a result of a certification proceeding must meet the adult criminal court standard for competence, and it was error for the juvenile court to apply juvenile-court-specific competency standards.