

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL FRANK FELIX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49514

FILED

AUG 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery with the use of a deadly weapon, assault with the use of a deadly weapon, and malicious injury to a vehicle. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Paul Frank Felix raises several issues on appeal; however, we focus solely on his claim that the district court erred when it refused to suspend the proceedings in order to assess his competence to stand trial.¹ Specifically, Felix argues that the district court abused its

¹Felix presents several additional claims that we need not address given our decision. Specifically, Felix contends that: (1) the district court's decision to handcuff him to his chair in front of the jury warrants reversal; (2) the district court erred in refusing to allow Felix to take the stand in his own defense; (3) the district court erred in removing Felix from the courtroom during trial; (4) there is insufficient evidence to sustain the conviction for the crime of robbery with use of a deadly weapon; (5) the district court's jury instruction regarding voluntary intoxication was improper; (6) the district court erred in allowing the written auto repair estimate into evidence; (7) the prosecutor's comments regarding Felix's intoxication, during closing argument, improperly shifted the burden of proof to the defense; (8) the district court abused its

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discretion because there was reasonable doubt regarding his competence to stand trial. We agree.

This court reviews a district court's decision to deny Felix an inquiry into his competence for abuse of discretion. Olivares v. State, 124 Nev. ___, ___, 195 P.3d 864, 869 (2008); Ferguson v. State, 124 Nev. ___, ___, 192 P.3d 712, 718 (2008). Nevada's competency procedure requires the district court to suspend the proceedings if any "doubt arises as to the competence of the defendant." NRS 178.405(1). The court shall then "hold a hearing to fully consider those doubts and to determine whether further competency proceedings under NRS 178.415 are warranted." Olivares, 124 Nev. at ___, 195 P.3d at 869. Competence shall be measured by the defendant's ability to understand the nature of the criminal charges, the nature and purpose of the court proceedings, and by his or her ability to aid and assist his counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding. Calvin v. State, 122 Nev. 1178, 1182-83, 147 P.3d 1097, 1100 (2006); Dusky v. United States, 362 U.S. 402, 402 (1960); see NRS 178.400(2)(a)-(c).

In this case, defense counsel expressed their concerns regarding Felix's competence at nearly every stage of the trial. Furthermore, the independent competency evaluations, coupled with Felix's bizarre courtroom behavior, apprised the court that there was sufficient doubt regarding Felix's competency. Nevertheless, the district

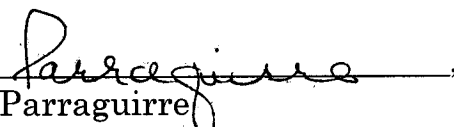
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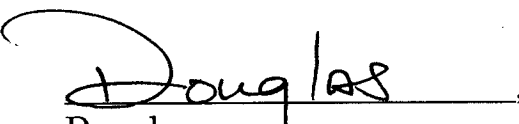
discretion by refusing to grant a mistrial; and (9) cumulative error warrants reversal.

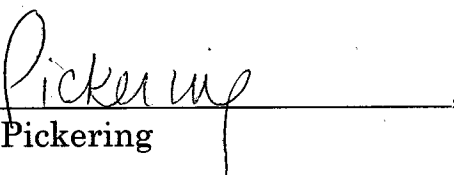
court refused to suspend the proceedings. The court explained that “[w]hile competency . . . can change over the course of time. I don’t think it changes so much in the course of a month, which is essentially since April 27th . . . , when Judge Glass said [he was] competent.”

We conclude that the district court’s decision was an abuse of discretion for two reasons. First, the evidence of Felix’s incompetence exceeded the threshold requirement of doubt, and thus, the district court erred in refusing to suspend the proceedings. See NRS 178.405(1). Second, it was improper for the district court to defer to the competency findings of Judge Jackie Glass. See Drope v. Missouri, 420 U.S. 162, 181 (1975) (concluding that competency is not a static condition and even when a defendant is found competent at the beginning of a trial, the “court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial”). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk