

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY MICHAEL CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71673

FILED

NOV 17 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gregory Michael Clark appeals from a judgment of conviction entered pursuant to a jury verdict of three counts of child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

First, Clark claims he did not knowingly, intelligently, and voluntarily waive his right to the assistance of counsel when he sought to represent himself at trial. Clark argues the district court's *Faretta*¹ canvass was inadequate because the district court failed to make the suggested inquiries and mandatory findings enumerated in SCR 253, and it failed to conduct a "full new *Faretta* canvass" on the third day of trial despite the State's urging to do so.

"The purpose of a *Faretta* canvass is to apprise the defendant fully of the risks of self-representation and of the nature of the charged crime so that the defendant's decision is made with a clear comprehension of the attendant risks." *Hooks v. State*, 124 Nev. 48, 54, 176 P.3d 1081, 1084 (2008) (internal quotation marks omitted). The Nevada Supreme Court

¹*Faretta v. California*, 422 U.S. 806 (1975).

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“has rejected the necessity of a mechanical performance of a *Faretta* canvass,” *Hymon v. State*, 121 Nev. 200, 212, 111 P.3d 1092, 1101 (2005) (internal quotation marks omitted), and “the district court certainly does not have an obligation to give the defendant specific warnings or advisements about every rule or procedure which may be applicable,” *Harris v. State*, 113 Nev. 799, 803, 942 P.2d 151, 154-55 (1997).

Here, the district court conducted an adequate canvass during which Clark indicated he understood the nature of the charges and the potential penalties, and the district court apprised him of the dangers of self-representation. Moreover, the record as a whole demonstrates Clark’s decision to waive his right to counsel was knowing, intelligent, and voluntary. Accordingly, we conclude the district court did not abuse its discretion by allowing Clark to waive his right to counsel. *See Hooks*, 124 Nev. at 55, 176 P.3d at 1085.

Second, Clark claims he was not competent to represent himself at trial, the district court did not make a finding as to his competency to represent himself at trial, and the district court failed to distinguish between the competency required to stand trial and the competency required to represent himself at trial.

In Nevada, “[t]he competency to stand trial is the competency needed to waive the right to counsel.” *Hymon*, 121 Nev. at 211, 111 P.3d at 1101. And the district court is not *required* to distinguish between a defendant’s competency to stand trial and his competency to represent himself at trial. *See generally Indiana v. Edwards*, 554 U.S. 164, 178 (2008) (“[T]he Constitution *permits* States to insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe

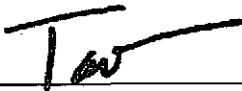
mental illness to the point where they are not competent to conduct trial proceedings by themselves” (emphasis added)).²

Here, Clark was sent to Lake’s Crossing for a competency evaluation. Upon his return, the competency court made a finding that he was competent to stand trial. Approximately six months elapsed between the competency court’s determination Clark was competent to stand trial and the start of trial. However, there were no events during this time period that raised questions about Clark’s competency to proceed to trial and the record demonstrates Clark was competent to stand trial. Because Clark was competent to stand trial, the district court did not err in concluding he was also competent to represent himself at trial.

Third, Clark claims cumulative error deprived him of a fair trial. However, we conclude there was no error, so there was nothing to cumulate.

Having concluded Clark is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²Clark also urges us to adopt the competency rule described in *People v. Johnson*, 267 P.3d 1125, 1131 (Cal. 2012) (holding “that trial courts may deny self-representation in those cases where *Edwards* permits such denial”). However, as discussed above, the Nevada Supreme Court has decided the competency needed to waive the right to counsel, and that court’s decisions are binding on this court.

cc: Hon. Douglas Smith, District Judge
The Law Office of Travis Akin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk