IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE MARK W. GIBBONS, DISTRICT JUDGE,
Respondents,
and
ALFRED P. CENTOFANTI, III,
Real Party in Interest.

No. 38987

ORDER DENYING PETITION

This is an original petition for a writ of mandamus challenging an order of the district court denying petitioner State of Nevada's motion for discovery of notes, reports, and tests conducted by psychiatric experts of the real-party-in-interest Alfred Centofanti, III, and motion for an independent psychiatric evaluation of Centofanti.

The State has charged Centofanti with one count of open murder with the use of a deadly weapon for allegedly shooting and killing his former wife. A jury trial was set, and Centofanti provided the State with a list of witnesses he intended to call in his defense case-in-chief, which list included several psychological experts. The State now requests extraordinary relief to compel the district court to order discovery of notes, reports, and tests of the psychiatric/psychological experts which Centofanti intends to call in his case-in-chief and to order a compulsory psychiatric evaluation of Centofanti.

A writ of mandamus may issue to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.[1] However, a writ may issue only where there is no plain, speedy, and adequate remedy at law,[2] and original petitions for extraordinary writs are addressed to the sound discretion of this court.[3] Because this case will likely proceed to trial and the State could not appeal thereafter, the State's writ petition is proper to challenge the district court's order in this case.

The State first contends that it was an abuse of the district court's discretion to deny its discovery request because NRS 174.234 and NRS 174.245 require the disclosure of notes, reports, or tests of the psychiatric/psychological experts which the defense intends to call in its case-in-chief at trial. Citing Williams v. Florida,[4] the State argues that Centofanti's privilege against self-incrimination is not violated by

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[1]NRS 34.160; see also State v. Dist. Ct., 116 Nev. 374, 997 P.2d 126 (2000).

[2]NRS 34.170; NRS 34.330; NRAP 21; see also Nev. Const. art. 6, § 4.

[3]Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983) (citations omitted).

[4]399 U.S. 78 (1970) (the privilege against self-incrimination was not violated by compelling criminal defendant to accelerate the timing of his disclosures). Cf. Binegar v. District Court, 112 Nev. 544 (1996) (former NRS 174.235(2) violated defendant's constitutional right against self-incrimination as interpreted because it forced defendant to disclose information he never intended to present at trial, some of which could be incriminating).

requiring him to "accelerate the timing of his disclosure" of information traditionally protected by the Fifth Amendment.

NRS 174.234(2) provides that in a gross misdemeanor or felony prosecution, a party who intends to call an expert witness to testify during its case-in-chief must, before trial, file and serve upon the opposing party a written notice containing:

> (a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of his testimony;
>
> (b) A copy of the curriculum vitae of the expert witness; and
>
> (c) A copy of all reports made by or at the direction of the expert witness.

NRS 174.245(1)(b) similarly provides in part that the defendant must allow the prosecutor to inspect and copy any "[r]esults or reports of physical or mental examinations, scientific tests or scientific experiments that the defendant intends to introduce in evidence during the case-in-chief of the defendant." Resolution of discovery issues is generally within the district court's discretion.[5]

We conclude that the district court did not abuse its discretion by denying the State's motion for discovery of notes, reports, and tests conducted by Centofanti's psychiatric/psychological experts. NRS 174.234(2) and NRS 174.245(1)(b) require discovery from the defendant only where he intends to call an expert witness or to introduce certain evidence during his "case-in-chief." Dr. Lipson, the psychologist endorsed

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[5]Lisle v. State, 113 Nev. 679, 695, 941 P.2d 459, 470 (1997).

by the defense on December 26, 2001, who was evaluating Centofanti and would be preparing a written report, had not yet completed his report and his findings were unknown at that time. With regard to the other two psychological experts, defense counsel indicated that Dr. Frazer, would not evaluate Centofanti but would testify based on his research and experience. His publications had already been provided to the State. Finally, defense counsel indicated that Dr. Heller would only testify regarding the victim if the defense received additional information regarding her gang background and juvenile criminal record, so he had no opinion at the time of the request.

The district court found there were no written notes, reports, or tests from these experts for the defense to disclose to the State at the time of the State's request. Furthermore, the district court indicated that if Centofanti or a defense expert testified at trial, it would give the State an opportunity at that time to review the data that the expert relied upon for purposes of cross-examination and rebuttal. Nonetheless, we recognize that Centofanti has a continuing duty under NRS 174.234 and NRS 174.245 to disclose any written notes, reports, or tests from these experts when they are completed. Should he fail to timely comply with his discovery obligations, the State may seek appropriate sanctions from the district court.

The State also contends that the district court abused its discretion by refusing to order a compulsory psychiatric evaluation of Centofanti. We disagree.

In the present circumstances, the Fifth Amendment to the United States Constitution made applicable to the states through the Fourteenth Amendment, protects an accused against compulsory

submission to a psychiatric/psychological examination.[6] While a criminal defendant may be compelled to submit to a psychiatric/psychological examination to determine both competence to stand trial and sanity at the time of the offense, neither issue is present here and the record does not support extending the doctrine of compulsory examination beyond insanity or competency.[7]

Here, Centofanti asserts that he has not raised an insanity defense, and neither party contends that his competency to stand trial is at issue in this case. Thus, the State has not demonstrated that a compulsory psychiatric evaluation of Centofanti is constitutionally permitted at this time. However, if Centofanti presents psychiatric/psychological evidence at trial, the State may rebut this presentation with evidence from the reports of the examination that Centofanti requested.[8]

Having considered the State's contentions and concluded that extraordinary relief is not appropriate at this time, we

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[6]Estelle v. Smith, 451 U.S. 454, 468 (1981) ("A criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding."); see also U.S. Const. Amend. V, XIV.

[7]Buchanan v. Kentucky, 483 U.S. 402, 422-23 (1987); see also Pate v. Robinson, 383 U.S. 375 (1966).

[8]Buchanan, 483 U.S. at 422-23 ("[I]f a defendant requests [a psychiatric] evaluation or presents psychiatric evidence, then, at the very least, the prosecution may rebut this presentation with evidence from the reports of the examination that the defendant requested. The defendant would have no Fifth Amendment privilege against the introduction of this psychiatric testimony by the prosecution.").

ORDER the petition DENIED.

_____, C.J.
Young

_____, J.
Maupin

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Rose

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Mark W. Gibbons, District Judge
Attorney General/Carson City
Clark County District Attorney
Allen Bloom
Special Public Defender
JoNell Thomas
Clark County Clerk