IN THE SUPREME COURT OF THE STATE OF NEVADA

MARJORIE ESCARENO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42754

FILED

MAY 12 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

Marjorie Escareno was convicted of two counts of sexual assault of a minor under fourteen years of age. Prior to Escareno's trial, questions arose regarding her competency to stand trial. The district court held a competency hearing, during which the experts who evaluated Escareno testified as to their conclusions of her competence. The district court determined that Escareno was competent, could stand trial, and could waive the insanity defense. The case proceeded to jury trial, and during the first recess, Escareno accepted a plea bargain.

On appeal, Escareno challenges the district court's conclusion regarding her competence and the determination that she knowingly and intelligently waived the insanity defense.

FACTS

Escareno left her husband, taking her young children from North Carolina through Tennessee, Louisiana and Texas before arriving in Las Vegas, Nevada. During the journey, Escareno engaged in sexual behavior with her children, including intercourse with her ten-year old son, Jacob, and directing Jacob to have anal intercourse with his seven-year old sister, Ana. Escareno believed God and the Bible required the

sexual acts to occur. Escareno was arrested and charged with sexual assault and lewdness with a minor under fourteen.

Questions arose regarding Escareno's mental state, and the district court referred her for psychiatric evaluation. Several physicians concluded that Escareno was incompetent, finding that although she understood the charges against her, she did not understand the wrongfulness of her accused actions. Escareno was then transferred to Lake's Crossing for evaluation. While there, several additional doctors evaluated Escareno and concluded that she was competent to stand trial.

Following the evaluations, Escareno was arraigned in district court and pleaded not guilty. The district court warned Escareno of the consequences of failing to enter a plea of not guilty by reason of insanity, yet Escareno refused the defense and stated that she would defend based on "freedom of religion." Escareno desired to forego her right to counsel because of disagreements over legal strategy. The district court ordered counsel to act in a stand-by role. The district court also canvassed Escareno to verify that her decision to represent herself was made knowingly and voluntarily, and concluded that Escareno was competent and could waive her right to representation.

Before trial, the district court received handwritten notes about God from Escareno, causing concern by the court over her mental capacity. The district court ordered that Escareno be reevaluated, and two additional experts evaluated her. Both experts reached the conclusion that Escareno was incompetent to stand trial.

Prior to trial, counsel filed a motion requesting a competency hearing pursuant to NRS 178.460. The court appointed a physician to render an independent, unbiased opinion based on all the expert opinions

and his own observations of Escareno. This expert concluded that Escareno was competent to understand the charges against her, but her delusional system was so fixed that it rendered her incompetent to cooperate with counsel. During the hearing, several doctors testified regarding their observations of Escareno and their conclusions of her competency based on those observations. The court concluded that Escareno was able to understand the nature of the charges brought against her, and that some doctors found she could aid and assist counsel; therefore, the district court found Escareno competent to stand trial. As Escareno was found competent to stand trial, the court concluded that she had the right to waive an insanity defense and proceed on her religious defense.

After the lunch hour on the first day of the jury trial, Escareno pleaded guilty to two counts of sexual assault of a minor under the age of fourteen. The district court canvassed Escareno and concluded that her plea was knowingly and voluntarily entered.

Escareno was sentenced to life in prison with the possibility of parole after 20 years for each of the two counts of sexual assault, with the sentences to run concurrently.

DISCUSSSION

Competency

Escareno argues substantial evidence does not exist to support the district court's finding that she was competent to stand trial. We disagree.

When conflicting psychiatric testimony is presented at a competency hearing, the trier of fact resolves the conflicting testimony, and the findings will be sustained on appeal when substantial evidence

exists to support them.[1] The two-part competency test is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," and whether the defendant has a "rational as well as factual understanding of the proceedings against him."[2] Substantial evidence exists to support a competency decision when at least one expert agrees with the court, even though other experts may disagree.[3]

All the experts concluded that Escareno was able to understand the proceedings against her and had a rational understanding of the charges brought against her. Experts reached differing conclusions as to whether Escareno could effectively communicate with her attorney with a reasonable degree of rational understanding. While some experts concluded that Escareno was capable of participating in the trial, conferring with her attorney, and assisting her attorney, other experts concluded her religious beliefs inhibited effective communication with her attorney.

Furthermore, some experts concluded that Escareno's decision to waive her insanity defense because of her religious beliefs supported a finding that she was incompetent. The experts' argue that Escareno must

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[1]Ogden v. State, 96 Nev. 697, 698, 615 P.2d 251, 252 (1980).

[2]Dusky v. United States, 362 U.S. 402, 402 (1960); see also NRS 178.400.

[3]See, e.g., Tanksley v. State, 113 Nev. 844, 847, 944 P.2d 240, 242 (1997) (substantial evidence exists where two members of sanity commission found defendant competent, despite third member's inability to reach a decision on competency question); Ogden, 96 Nev. at 698, 615 P.2d at 252 (one doctor's finding of competence was substantial evidence to uphold district court's determination of competence).

be incompetent, because only an incompetent person would choose to waive the insanity defense. Although this court has not explicitly decided this issue, a number of jurisdictions have rejected this religious-irrationality argument, finding courts may not properly judge fanatical, bizarre religious beliefs.[4]

Before concluding that Escareno was competent to stand trial, the district court asked Escareno several questions about her ability to assist counsel. Escareno agreed to assist counsel, to remind the attorney if he forgot important information, and to tell the attorney if a witness was lying.

We conclude there was substantial evidence to support the district court's decision regarding Escareno's competence. Several experts presented evidence that she was capable of meaningfully assisting counsel, which satisfies our inquiry for substantial evidence.

NRS 178.400

Escareno argues that NRS 178.400 is unconstitutional given that a literal reading of the statute could allow a finding of competence

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[4]See, e.g., Ford v. Bowersox, 256 F.3d 783, 785-87 (8th Cir. 2001) (where a capital murder defendant rejected a plea bargain limiting his sentence because of a belief that he would be acquitted by the grace of God, the court found his fervent religious beliefs were not synonymous with incompetence to stand trial); Ryan v. Clarke, 281 F. Supp. 1008, 1032 (D. Neb. 2003) (court concluded a pursuit of fanatical religious beliefs is not the same as incompetence); Breard v. Netherland, 949 F. Supp. 1255, 1264 (E.D. Va. 1996) (defendant's argument that religious fanaticism precludes a rational understanding of the charges against him does not show incompetence but is an "attempt to embroil the Court in an analysis of the appropriateness of certain religious and cultural beliefs.")

when only one prong of the two-prong competency test set forth in Dusky v. United States[5] is met.

NRS 178.400 states that "incompetent" means someone is "not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist his counsel in the defense." The Dusky test for competency is whether the accused has sufficient present ability to consult with counsel, and whether he has a rational and factual understanding of the proceedings against him.[6] In Melchor-Gloria v. State, this court reiterated the Dusky test, stating a finding of competency requires that both "'sufficient present ability to consult with his lawyer'" and a "'factual understanding of the proceedings against him'" be present.[7]

We conclude that NRS 178.400, as interpreted in Melchor-Gloria, requires that both prongs of the Dusky test be met; therefore, we find the statute is not unconstitutional.

Waiver of insanity plea

Escareno's final argument is that the trial court erred in failing to determine that her waiver of the insanity defense was knowing and voluntary.

A person found competent to stand trial is, as a matter of law, also competent to decide whether or not to impose an insanity defense.[8] In

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[5]362 U.S. at 402, 80 S.Ct. at 789.

[6]Id.

[7]99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (quoting Dusky, 362 U.S. at 402).

[8]Johnson v. State, 117 Nev. 153, 163, 17 P.3d 1008, 1015 (2001).

Johnson v. State, we focused on the Massachusetts' Supreme Judicial Court's decision to protect a defendant's choice not to label himself insane if the defendant is advised before of the consequences of the decision by counsel and the court.[9] In Johnson, we concluded that where a defendant could waive counsel and represent himself, he could also waive the insanity defense.[10] In Johnson, the defendant was canvassed and acknowledged that he understood the dangers of self-representation, the elements of the crime charged, the possible sentencing that might occur, and possible defenses to present.[11]

Here, the court questioned Escareno outside the presence of the State, informing her about the consequences of not entering an insanity plea and about the dangers of self-representation. In the presence of the State, the court also canvassed Escareno to determine whether her decision to represent herself was knowing and voluntary. Escareno's counsel advised her of the dangers of foregoing the insanity defense. The court also advised Escareno of the serious nature of her charges, the consequences of being convicted, and the likely failure of her religious freedom defense; Escareno noted that she understood the advisement.

We find the district court properly allowed Escareno to waive the insanity defense. Consistent with Johnson, Escareno was canvassed by the court and was found competent to stand trial and to waive counsel. Therefore, we find Escareno could also properly waive an insanity defense.

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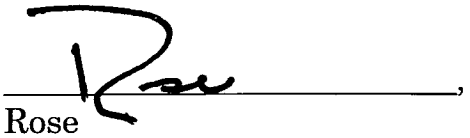
[9]Id. at 162, 17 P.3d at 1014.

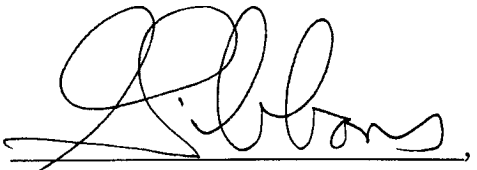
[10]Id. at 165, 17 P.3d at 1016.

[11]Id. at 156-57, 17 P.3d 1011.

Accordingly, we ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



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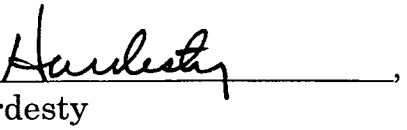

_____, J.
Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge
Amesbury & Schutt
Attorney General Brian Sandoval/Carson City
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Clark County Clerk