



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISMAR H. CHUN CASTRO,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 135, 2024
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

APPELLANT'S OPENING BRIEF

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## NATURE AND STAGE OF THE PROCEEDINGS

Ismar H. Chun-Castro ("Castro"), was charged with two counts of rape first degree, eight counts of unlawful sexual contact first degree and six counts of sexual abuse of a child. A13.

On February 17, 2022, defense counsel requested that the court order Castro to undergo a competency evaluation. The Superior Court granted the motion and issued the order on February 21, 2022. D.I.30. On September 29, 2022, Castro was evaluated at the State hospital for a competency determination. He was found to be incompetent to stand trial on December 5, 2022 and was ordered to undergo the competency restoration program. D.I.35. Subsequently, on April 5, 2023, it was found that his competency had been restored and that he could proceed to trial. A55.

Castro went to jury trial on December 11, 2023. D.I.67. The State nolle prossed six counts of unlawful sexual contact. D.I.71. At the conclusion of trial, Castro was convicted of all remaining counts. D.I.77.

Castro was sentenced on March 8, 2024 to 216 years at Level 5, followed by various levels of probation. (Exhibit B attached to Opening Brief).

A notice of appeal was docketed and this is his Opening Brief in support of his timely-filed appeal.

## SUMMARY OF THE ARGUMENT

1. The State failed to establish by a preponderance of the evidence that the Defendant was mentally competent to stand trial because the Superior Court's conclusion that the Defendant was competent to stand trial was against the weight of the evidence.

## STATEMENT OF FACTS

The charges against Castro stem from allegations made by his minor stepdaughter that he engaged in sexual intercourse and sexual contact with her between May 1, 2020 and May 31, 2020. A13. Castro was interviewed by police in December of 2020 and admitted to having sexual contact with the complainant. A97. The video of the interview was played at trial for the jury. A99. The facts surrounding the allegations against Castro are not pertinent to the instant appeal before this Court.

On February 17, 2022, an office conference was held at the request of defense counsel, prompted by concerns about Castro's competency. Defense counsel expressed that, given what amounted to a confession in the interview with police, he advised Castro "we have no defense." A22. Counsel explained to the Court that he had plea discussions with the State and he conveyed to Castro the options of working out a resolution with an opportunity of "getting out of jail or go to trial and never get out." Counsel recounted his frustrations that Castro's response has continuously been, for example, "it's in God's hands" and "I want to be out tomorrow, and God's going to make it happen." He further expressed concern over Castro lacking a rational thought process with no back and forth between the two of them. A23. The trial court agreed with defense counsel that, given Castro's mental status, he was unable to work with counsel as

necessary to try to either reach a resolution or to prepare for trial. A24. As a result, the trial court granted defense counsel's request for a psychological evaluation and the State did not oppose. A25-26.

Dr. Constance Mesiarik ("Mesiarik") evaluated Castro on September 29, 2022. A32. Mesiarik concluded that Castro was not competent to stand trial due to concern for possible delusional beliefs influencing his unwillingness to try to defend himself in his case. A36-37. Castro reported hearing voices that he believed came from God. For example, he expressed to Mesiarik that he wanted to plead guilty and did not want to discuss this with an attorney stating that "God will have the answer" and his "lawyer will be sent an angel to save [him]." A36. Castro further added that he did not want to defend himself in court, stating that God would "do something great." Castro had indicated his belief with certainty that he would be going home. A36.

On December 2, 2022, the court held a teleconference with the parties to discuss the Mesiarik's evaluation. Defense counsel reiterated his concerns that going to trial defied all rational thought for Castro given the sentence that would inevitably follow. A40. Defense counsel and the State both agreed that given Mesiarik's conclusion and recommendation, Castro's competency restoration should be attempted at DPC. As a result, the court ordered pursuant to 11 Del. C. § 404(a) that Castro be transferred to DPC and undergo further testing.



On April 4, 2023, Castro was again evaluated, this time by Jonathan P. Tan, PsyD. ("Tan"). Tan's report included a summary of Castro's treatment while admitted to DPC. In one instance, Castro described hearing voices of a demon "outside" his head. The demon voice stated "Look at you right now. You're not worth anything. Life isn't worth it anymore. Kill yourself." A50. Tan explored Castro's relationship with God. Castro stated to Tan that "God showed me leaving out the prison (in a vision). When the date, I don't know, but God already showed me my freedom." A52. Castro seemed to recognize that, although he would not be released immediately, he would patiently await his eventual release. Castro stated "if God means I must stay in jail for 10 years, that is right." A52. Tan opined that Castro is "deeply religious and that his faith influences how he perceives life, his future, and the world around him, even interpret[ing] dreams as visions from God." A53.

As required, Tan addressed the McGarry Criteria in writing his report. Castro "recognized that he is facing several years of incarceration, possibly more than 10." He further understood that probation would follow and he would have to report once a month or once a week. A53. Castro added "if I go to trial, it's everything in God's hand" and defense counsel is a "good lawyer...he explain me very well, what is best for me...I only trust in God[.]" A54.

When asked about plea bargaining, Castro did not understand that pleading

no contest (Alford plea) meant pleading guilty while maintaining innocence, or the ramifications of such a plea. A54. When asked about Castro's ability to appraise legal defenses and plan legal strategy, Castro stated that he would "show my certificates" to demonstrate how he is "commending [his] life to God." Castro declined to offer how he would defend himself in court. Despite the aforementioned, Tan concluded that Castro was competent to stand trial. A55.

Following Tan's report, a teleconference was held on April 26, 2023, at the request of defense counsel. Counsel expressed to the Court their confusion and bewilderment that, despite the second report showing the same or similar findings, the conclusion was that competency had been restored. A58. Defense counsel again highlighted the fact that plea offers had been made to resolve the matter "but going in to a case where you're gonna get life in jail and saying God's gonna handle it still doesn't seem very rational to me." A59. The court acknowledged the quandary defense counsel was facing and suggested counsel perhaps order another competency evaluation by a different doctor, however defense counsel explained that Castro's family had stopped paying him for his services and did not have the financial means to hire their own expert. A61. The case was then scheduled for trial.

While Castro, under the advice of counsel, elected not to testify at trial, he did make a statement to the Court after the Judge's colloquy. A109. Castro stated

the following:

Your Honor, the first time that I appeared before you, I told my attorney very clearly that he was not going to be able to help me, with all due respect, because my Lord, my God, showed me the exit and he let me know that he had already prepared the Court. And when you asked me, "How is it that your God is going to save you," at that moment I couldn't -- I just told you that my God was very powerful and he could do miracles; that he had showed me in a vision like I hold in my hand, that at that moment I did understand. When someone in a prison offered me these courses, the Gospel Echoes team, that's when I asked him to order me. When I completed the course, I did the first four classes, I received this in the mail (indicating). When I open it, I put it in my hands like this (indicating), and I told myself, I have already seen this. That's when I remembered the vision that I had received from God. And then my Lord came again, in addition, and he told me that I should not be afraid because he was preparing me for this and that he was always going to be next to me, and I believe him. That's why I came, just to show it to you. God loves us. And no matter the race or the color, he's fair and just, to save us from any situation. And it's worth it. He says, "You will love your Lord your God with all your heart and with all your soul and with all your mind." And that's what I have been doing. It took me two years to complete all this. Day and night, I used to study, and at the same time I would pray for God to continue giving me strength, and he has done it up until today. I would like you to see this, all that I have done, and I want everybody to know that the God that I serve can do big things and miracles on earth. When you are with him, everything is possible. I've been secretly seeking for God and he has been helping me up until now. I told God that when Your Honor told my attorney that they should get me some help because I needed some mental health help, that's what you thought that I needed, but I am not crazy. But thank you also for sending me to that place, DPC, because I also was able to show them right there that I will serve God with all my heart. Many times they asked me, "Why were you sent here if you are fine?" And I only answered that because what

I believe you are not able to be. I have had conversations with my lawyer. And when I shared those conversation, they thought that I was crazy because they thought that I pretend to see things that are not normal. But, to me, everything is virtual and I can see the big power of God. I believe, Your Honor, that we both serve the same God, you and I, and I'm expecting that miracle because he showed me my exit many times. I have never been in prison. My Lord showed me a vision coming out from a blue door, and the guard said, "You're coming with me," told me, "Now you are free." And I'm waiting for that moment. I've been for years in prison and I have learned a lot. I've learned to value my life and the lives of others. I just want to say that.

A109. As predicted, Castro was convicted on all counts. D.I.77.

On February 7, 2024, an office conference was held to discuss the sentencing in this matter. The trial judge acknowledged that Castro was not cooperating with the presentence investigation. He was not very communicative and either refused to answer questions or provided nonsensical responses. A114. This, coupled with the fact that Castro was facing 200 years minimum mandatory time, prompted the court to discuss with the parties if there still remained a possibility for a sentencing resolution. The court posed the predicament to counsel, "I was just wondering if you all have any ideas for possibly cleaning this up or making it more streamlined." A115. In the end, no alternative could be reached and Castro was sentenced on March 8, 2024 to 216 years at Level 5.

**I. THE DEFENDANT’S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE TRIAL COURT DEEMED HIM TO BE COMPETENT TO STAND TRIAL DESPITE HIS INABILITY TO ASSIST DEFENSE COUNSEL IN PREPARATION FOR TRIAL AND AN IRRATIONAL UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM.**

**Question Presented**

The question presented is whether the Superior Court erred by determining that the Defendant was competent to stand trial. The question was preserved for review by motion to conduct a hearing to ascertain the Defendant’s competency to stand trial. D.I. 30.

**Standard and Scope of Review**

The Court conducts *de novo* review when evaluating a trial judge’s determination that a defendant was competent to stand trial. *Gibson v. State*, 981 A.2d 554, 557 (Del. 2009). The Court will give deference to the trial judge’s findings when the record supports them. *Bailey v. State*, 490 A.2d 158, 167 (Del. 1983).

**Argument**

Due process requires that a defendant be competent to stand trial. *Pate v. Robinson*, 383 U.S. 375, 378 (1966); *Harris v. State*, 410 A.2d 500, 502 (Del. 1979). For this reason, procedures have been established in order to protect a defendant’s due process right not to be subjected to prosecution unless he is

mentally competent to face trial. *Pate*, 383 U.S. at 385. Without such protections, the trial would be nothing short of a farce because placing an incompetent defendant before a jury on the issue of guilt or innocence does not reflect “a reasoned interaction between an individual and his community,” but instead a “societal invective against an insensible object.” *State v. Shields*, 593 A.2d 986, 1005 (Del. Super. 1990). However, “due process [only] requires that the defendant be afforded a fair, not perfect trial, and that he be able to consult with his lawyer with a reasonable, not perfect degree of rational understanding.” *State v. Wynn*, 490 A.2d 605, 610 (Del. Super. 1985).

To determine competency to stand trial, the Delaware Code states:

[w]henever the court is satisfied, after hearing, that an accused person, because of mental illness or serious mental disorder, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center [(“DPC”)] until the accused person is capable of standing trial.

11 *Del. C.* § 404 (a). The Delaware Code codifies the United States Supreme Court’s test for determining a defendant’s legal competency. *Shields*, 593 A.2d at 1004. In *Dusky v. United States*, the United States Supreme Court held that a defendant is legally competent if he has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and has a rational and factual understanding of the proceedings against him. *Dusky v. United*

*States*, 362 U.S. 402 (1960). The Supreme Court expanded this test in *Drope v. Missouri*, by holding that a defendant must also be able to assist his attorney in preparing his defense. *Drope v. Missouri*, 420 U.S. 162, 171 (1975).

Competency is a relative matter and is measured not by a reasonable person standard, but by the average criminal defendant. *Shields*, 593 A.2d at 1012-13. Competency is difficult to determine because it is not always manifestly apparent that a defendant is unable to understand the proceedings against him or to assist his attorney. *Shields*, 593 A.2d at 1005. Thus, the *Dusky-Drope* test is imprecise because it gives individual judges room to evaluate each case in light of a defendant's individual level of functioning in relation to the case's complexity. *Id.* at 1004. As such, a judge is to consider the totality of the circumstances when making a competency determination. *State v. Williamson*, 2013 WL 268981, 7 (Del. Super. 2013).

In *State v. Shields*, the Superior Court listed twenty factors a trial court could consider in determining if a defendant satisfies the *Dusky-Drope* test. *Id.* at 1010. These factors include:

- (1) that the defendant has sufficient mental capacity to appreciate his presence in relation to time, place, and things;
- (2) that his elementary mental processes are such that he understands that he is in a court of law charged with a criminal offense;
- (3) that he realizes there is a judge on the bench;
- (4) that he understands that there is a prosecutor present who will try to convict him of a criminal charge;
- (5) that he has a lawyer who will undertake to defend him against

the charge; (6) that he knows that he will be expected to tell his lawyer all he knows or remembers about the events involved in the alleged crime; (7) that he understands that there will be a jury present to pass upon evidence in determining his guilt or innocence; (8) that he has sufficient memory to relate answers to questions posed to him; (9) that he has established rapport with his lawyer; (10) that he can follow the testimony reasonably well; (11) that he has the ability to meet stresses without his rationality or judgment breaking down; (12) that he has at least minimal contact with reality; (13) that he has the minimum intelligence necessary to grasp the events taking place; (14) that he can confer coherently with some appreciation of proceedings; (15) that he can both give and receive advice from his attorneys; (16) that he can divulge facts without paranoid distress; (17) that he can decide upon a plea; (18) that he can testify, if necessary; (19) that he can make simple decisions; and (20) that he has a desire for justice rather than undeserved punishment.

*Id.* at 1010-11.

Mental health experts also use the *McGarry*<sup>1</sup> factors to form an opinion as to whether a defendant is legally competent. *Williamson*, 2013 WL 268981 at 3. These factors include:

- (1) the ability to appraise the legal defense available; (2) his ability to plan a legal strategy; (3) the level of his manageable behavior; (4) the quality of a relating to his attorney; (5) his ability to appraise participants in the courtroom; (6) his understanding of court procedures; (7) his appreciation of his charges; (8) his appreciation of the

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<sup>1</sup> The *McGarry* questions are also known as the Competency to Stand Trial Instrument and described as a widely used assessment procedure in the area of competency to stand trial. *State v. Shields*, 593 A.2d 986, 1000, f. 23 (Del. Super. 1990).



range and nature of his penalties; (9) his ability to appraise the evidence and likely outcome; (10) his capacity to disclose to his attorney available pertinent facts surrounding the offense; (11) his capacity to challenge prosecution witnesses realistically; (12) his capacity to present relevant testimony; and (13) his motivation for a positive outcome.

*Id.* at 3-4. No one factor is dispositive in determining competency, *State v. Reed*, 2004 WL 2828043, 1 (Del. Super.), even though one factor may be sufficient in some cases. *Shields*, 593 A.2d at 1005. The Delaware Supreme Court has indicated that mental retardation, mental illnesses or disorders, and a defendant's relationship with his attorney should be considered when determining competency. *Harris*, 410 A.2d at 501-02. Delaware law has yet to hold that there is a specific factor mandating a *per se* incompetence determination. *See Shields*, 593 A.2d at 1007 (holding mental retardation by itself is not sufficient to support an incompetency determination and usually will need to be accompanied by some form of extreme psychological disorder); *Wynn*, 490 A.2d at 608 (holding amnesia is a factor to consider when determining competency, but alone does not render defendant *per se* incompetent).

The prosecution has the burden of proof in establishing whether a defendant is competent, and must prove competency by a preponderance of the evidence. *Diaz v. State*, 508 A.2d 861, 863 (Del. 1986). Though legal and mental health experts are typically called to testify at competency hearings, the trial

judge makes the ultimate determination of a particular defendant's competence. *Shields*, 593 A.2d at 1011; *Williamson*, 2013 WL 268981, at 7. Because a defendant's competency may wax and wane, a trial judge must be aware of legitimate changes and conduct additional competency hearings when necessary. *Williamson*, 2013 WL 268981, at 7.

The Court applies *de novo* review to a trial court's determination of competency and will defer to that court's findings when the record supports those findings. *Gibson*, 981 A.2d at 557. The first fatal flaw in the instant case is the trial court did not adequately create a record and explain its legal rationale for denying Castro's competency challenge. That failure was an abuse of discretion. *Davis v. State*, 2023 WL 7382873, at \*4 (Del. Nov. 8, 2023). The record reflects that at the April 26, 2023 teleconference, which was requested by defense counsel, the court was immediately prepared to schedule the matter for trial following Tan's DPC report. A58. No factual determinations were made and no proper competency legal analysis was conducted. Without the court's legal rationale, we cannot discern the extent to which factual determinations were required to fairly adjudicate Castro's competency. *Davis*, 2023 WL 7382873 at \*4.

“Our case law mandates that a trial judge make factual determinations and supply a legal rationale for a judicial decision as a matter of law. Failure to do so

may be an abuse of discretion.” *Holden v. State*, 23 A.3d 843, 846–47 (Del. 2011). As this Court has acknowledged before, “[w]e are mindful of the tremendous time burdens on our trial courts. But it is part of a trial judge’s adjudicative responsibilities ‘to state the reasons for his action, no matter how briefly.’” *Id.* at 847. In short, the important competency claim Castro raised deserved full and fair consideration by the trial court in this case.

Castro was not competent to stand trial. Under 11 *Del. C.* § 404(a) and the *Dusky-Drope* test, *Dusky*, 362 U.S. at 402; *Drope*, 420 U.S. at 171, Castro has not met the threshold requirements for competency. The law on competence is clear. “It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and the object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.” *Drope*, 420 U.S. at 171; see also *Medina v. California*, 505 U.S. 437, 439 (1992) (noting that the Due Process Clause of the Fourteenth Amendment prohibits the prosecution of defendants who are not competent to stand trial). A critical component of competence is the ability to “communicate effectively with defense counsel.” *Cooper v. Oklahoma*, 517 U.S. 348, 368 (1996).<sup>2</sup>

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<sup>2</sup> “A defendant’s inability to communicate effectively with counsel may leave him unable to exercise other rights deemed essential to a fair trial—e.g., ***choosing to plead guilty***, waiving his privilege against compulsory self-

From as early as February, 2022, defense counsel repeatedly informed the court of Castro's inability to consult rationally with his attorney. Time and again, defense counsel told the court that Castro lacked a rational thought process. A23;A40;A59;A109. He expressed concern over Castro lacking a rational thought process with no back and forth between the two of them. Counsel described to the court that “[Castro] has kind of a blank look on his face, just kind of staring straight out, this weird serenity.”<sup>3</sup> A23. Defense counsel informed the court of his observations up through sentencing. However, in its decision, the trial court failed to elaborate or give proper weight to these concerns. Instead, it relied exclusively on the DPC evaluation from Tan finding Castro competent to stand trial which was substantively congruent with Mesiarik’s earlier report declaring him incompetent.

In her competency evaluation, Mesiarik determined that Castro was not

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incrimination by taking the witness stand, or waiving his rights to a jury trial or to cross-examine witnesses—and to make a myriad of smaller decisions concerning the course of his defense. These risks outweigh the State's interest in the efficient operation of its criminal justice system.”(emphasis added) *Cooper*, 517 U.S. at 349.

<sup>3</sup> “Defense counsel enjoys a unique vantage for observing whether [his] client is competent. This vantage is especially important with respect to whether defense counsel's client was able to consult rationally with him. As a result, we afford significant weight to a lawyer's views as to whether his client has ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.’” *United States v. Muriel-Cruz*, 412 F.3d 9, 13 (1st Cir. 2005) (emphasis in original) (quoting *United States v. Giron-Reyes*, 234 F.3d 78, 80 (1st Cir. 2000)).

competent to stand trial due to possible [religious] delusional beliefs influencing his unwillingness to try to defend himself in his case. A36-37. For example, he expressed to Mesiarik that there was nothing for him or his lawyer to do stating that "God will have the answer" and his "lawyer will be sent an angel to save [him]." A36. Castro further added that he did not want to defend himself in court, stating that God would "do something great." Castro believed with certainty that he would be going home. A36. He was significantly impaired in his factual understanding of the legal system and the process of adjudication.

Tan's evaluation produced very similar results. Tan also explored Castro's relationship with God. Castro stated to Tan that "God showed me leaving out the prison (in a vision). When the date, I don't know, but God already showed me my freedom." A52. Castro seemed to recognize that, although he would not be released immediately, he would patiently await his eventual release. Castro stated "if God means I must stay in jail for 10 years, that is right." A52. Tan opined that Castro was "deeply religious and that his faith influences how he perceives life, his future, and the world around him, even interpret[ing] dreams as visions from God." A53. Castro had a limited understanding of plea bargaining. Tan noted that Castro did not understand that pleading no contest meant pleading guilty while maintaining innocence, or the ramifications of such a plea. A54.

In order to assist his attorney, a defendant must make decisions that

severely impact his or her life. Castro did not have sufficient ability to consult with his attorney and have a rational understanding of the proceedings. Although Castro demonstrated a factual understanding of the court system, his appreciation of the proceedings and his ability to assist in his own defense was significantly impaired by his religious delusions. He was unable to weigh any defense options presented to him by counsel. His beliefs impaired his ability to rationally weigh the advantages and the disadvantages of a plea bargain. *Sibug v. State*, 126 A.3d 86, 88 (Md. 2015). This was evident by the fact that Castro continuously turned down plea offers from the State despite confessing to the allegations and facing what amounted to a life sentence.

The record establishes that Castro's religious delusions made him mentally incapable of participating intelligently in his defense. This rendered Castro unable to "assist in preparing his defense." *Drope*, 420 U.S. 162. The main due-process concern with convicting an accused while he is legally incompetent is his inability to present a defense. *Id.* at 171. The trial court's determination that Castro was competent runs directly counter to this tenet of due process. Thus, Castro's conviction must be reversed.

## CONCLUSION

For the reasons and upon the authorities cited herein, the Defendant's convictions and sentences should be reversed.

Respectfully submitted,

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DATED: February 14, 2025