

## No Abuse of Discretion in Determining Competence to Stand Trial Without Holding Evidentiary Hearing

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### In a Capital Murder Case, the Arizona Supreme Court Ruled That the Trial Court Did Not Abuse Its Discretion in Determining Competence to Stand Trial Without Holding an Evidentiary Hearing

In *State v. Kuhs*, 223 Ariz. 376 (Ariz. 2010), a capital murder case, the Supreme Court of Arizona upheld the conviction and capital sentencing of a man charged with first-degree burglary and first-degree murder. In a unanimous decision, the court held that the trial court did not err by finding Mr. Kuhs competent to stand trial without holding an evidentiary hearing.

#### Facts of the Case

In 2005, 21-year-old Ryan Wesley Kuhs, armed with a knife, entered uninvited the apartment of Enrique Herrera, a man with whom Mr. Kuhs had argued the night before. Mr. Kuhs stabbed Mr. Herrera as he slept. A struggle ensued, as Mr. Herrera attempted to defend himself; Mr. Kuhs stabbed Mr. Herrera 20 times before delivering a final stab wound to the head. Three neighbors witnessed Mr. Kuhs, covered in blood, leaving Mr. Herrera's apartment. While Mr. Kuhs washed himself and changed his clothing in another apartment, the neighbors entered Mr. Herrera's apartment to discover him lying in a pool of blood. Mr. Herrera died later that day after he was taken to the hospital.

That same day, Mr. Kuhs was arrested when he later returned to the apartment complex. After he was read his *Miranda* rights, Mr. Kuhs eventually confessed to the murder. He was tried by jury in the Superior Court of Maricopa County, and was convicted of first-degree burglary and first-degree murder. In the penalty phase, the jury recom-

mended that Mr. Kuhs be put to death. This recommendation was based on the absence of significant mitigating factors and the presence of several aggravating factors, including two prior convictions for serious offenses, commission of the murder while released from prison on probation, and the "especially heinous, cruel, or depraved manner of the murder."

In January 2006, before trial, Mr. Kuhs claimed that he was experiencing auditory and visual hallucinations in which God spoke to him. He subsequently requested a prescreening examination pursuant to Arizona Rule of Criminal Procedure 11.2(c); a full examination, pursuant to Ariz. R. Crim. P. 11.2(d) was subsequently ordered by the court. Based on the concurring (but independent) reports of forensic psychiatrist Dr. Jack Potts and forensic psychologist Dr. Scott Sindelar, the trial court found Mr. Kuhs to be incompetent to stand trial and ordered him committed to the Maricopa County Correctional Health Services Restoration Program.

During his competency restoration, Mr. Kuhs was evaluated by forensic psychologist Dr. Jason Lewis, who prepared a court-ordered report detailing Mr. Kuhs' "progress and prognosis." In his report, Dr. Lewis opined that Mr. Kuhs had malingered symptoms of psychosis and was competent to stand trial. The defense counsel stipulated that the court could assess his competency based on Dr. Lewis' report; no evidence supporting Mr. Kuhs' incompetency was entered by the defense.

At a July 11, 2006, hearing, the judge found Mr. Kuhs competent to stand trial in a hearing based on "a review of that [July 4] final report as well as the pleadings filed pursuant to Rule 11." Mr. Kuhs appealed the conviction to the Supreme Court of Arizona, based in part on his contention that the court erred by finding him competent to stand trial without holding an evidentiary hearing. The U.S. Supreme Court denied *certiorari* requested by Mr. Kuhs.

#### Ruling

In a unanimous decision, the Arizona Supreme Court held that the trial court did not abuse its discretion in making its competency determination without holding an evidentiary hearing. The court affirmed the trial court's conviction of Mr. Kuhs and his death sentence.

## Reasoning

The court stated that Arizona Rule of Criminal Procedure 11.2 protects the due process right of a defendant not to be tried or convicted while incompetent, by providing for a prescreening examination and hearing if there are “reasonable grounds” to question the defendant’s competency. If a defendant is found to be incompetent but restorable, the defendant is court-ordered to restoration, and a report must be filed with the court. When the court receives a report that the defendant has been restored to competency, “. . .the court shall hold a hearing to re-determine the defendant’s competency” at which the parties may “introduce other evidence regarding the defendant’s mental condition” or “submit the matter on the experts’ reports” (Ariz. R. Crim. P. 11.6(a), 11.5(a)).

Mr. Kuhs argued that he was denied the hearing required by Rules 11.5 and 11.6 because the court allowed “the parties [to] stipulate to competency,” and by doing so, the court violated its duty “to conduct a competency hearing” and “to make an independent inquiry to determine [whether Kuhs] was competent to stand trial” (*Kuhs*, p 380). However, the court wrote that defense counsel stipulated to the admissibility of Dr. Lewis’ competency report, not to Mr. Kuhs’ competency to stand trial. At that time, defense counsel had the opportunity to offer evidence in support of Mr. Kuhs’ incompetency, but did not do so.

The court also reasoned that because the same judge had presided over the initial Rule 11 proceeding, the court was familiar with the reports previously submitted by Drs. Potts and Sindelar and thus would not have benefitted from a hearing including evidence from those earlier reports.

## Discussion

The United States Supreme Court has held that the conviction of a legally incompetent defendant violates due process (*Bishop v. United States*, 350 U.S. 961 (1956)). In *Dusky v. United States*, 362 U.S. 402 (1960), the Court defined the constitutionally required minimum standard for a defendant to be considered competent to stand trial. Subsequent decisions (e.g., *Pate v. Robinson*, 383 U.S. 375 (1966); *Drope v. Missouri*, 420 U.S. 162 (1975); and *Jackson v. Indiana*, 406 U.S. 715 (1972)) broadened due process protections for defendants whose compe-

tence to stand trial is in question and for defendants found incompetent to stand trial.

In *Pate v. Robinson*, the Court held that “evidence raised a sufficient doubt as to respondent’s [Robinson’s] competence to stand trial so that respondent was deprived of due process of law under the Fourteenth Amendment by the trial court’s failure to afford him a hearing on that issue” (*Pate*, p 375). The Court in *Pate v. Robinson* did not “prescribe a general standard with respect to the nature or quantum of evidence necessary to require resort to an adequate procedure” (*Drope*, p 172). When a “bona fide doubt” exists regarding a defendant’s competency to stand trial, a hearing to determine the defendant’s competency is required.

The Court in *Drope* held that “the Missouri courts failed to accord proper weight to the evidence suggesting the petitioner’s (Drope’s) incompetence” (*Drope*, p 162). This decision furthered the trend of broadening defendants’ due process protections, representing the high-water mark for competency to stand trial procedural due process.

In *Jackson v. Indiana*, the Court held that the state of Indiana cannot constitutionally commit a defendant for an indefinite time to restore competence to stand trial, unless there is a substantial probability that the defendant is restorable. Indefinite commitment without a substantial probability of restoration was found to violate the equal protection and due process clauses of the Fourteenth Amendment.

More recently, courts have narrowly interpreted due process protections in a variety of contexts, including the release of insanity acquittees, the commitment of sex offenders, and competence to stand trial. In contrast to earlier cases that had broadened due process protections, the holding of the Supreme Court of Arizona in *Kuhs* is consistent with this growing trend to interpret narrowly the due process protections for criminal defendants whose competence is in question. In *United States v. Binion*, 132 Fed. Appx. 89 (8th Cir. 2005), the U.S. Court of Appeals for the Eighth District held that evidence of malingering during a competency-to-stand-trial evaluation could enhance sentencing in federal court. In *United States v. Batista*, 483 F.3d 193 (3d Cir. 2007), the Third Circuit made a similar ruling and rejected the appellant’s argument that enhancement would “chill” defense exploration of competence, thus violating due process.

By holding that the trial court did not abuse its discretion by finding Mr. Kuhs competent to stand trial without holding an evidentiary hearing, the Supreme Court of Arizona narrowly interpreted the due process requirements outlined in the Arizona Statute. After decades of broadening due process protections for defendants whose competence to stand trial is in question, this ruling and others are defining the outer limits of those protections.

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## Limitations of Expert Testimony on Battered Woman Syndrome

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### Compelled Examination of Defendant by Psychiatrist for the State: Limitations on Testimony of State's Expert

In *State v. Goff*, 942 N.E.2d 1075 (Ohio 2010), the Ohio Supreme Court considered three major issues: the appropriateness of psychiatric expert testimony on battered woman syndrome (BWS); whether a defendant raising a self-defense based on BWS could be subjected to a psychiatric evaluation by the state; and whether the state's expert could testify regarding inconsistencies in information the defendant provided, or the expert could testify only to the nature of BWS and whether the defendant's actions were related to the syndrome.

#### *Facts of the Case*

On March 18, 2006, Megan Goff shot her estranged husband William Goff 15 times, killing him. Mrs. Goff reported that he had been physically and emotionally abusive to her during their seven-year marriage. On January 18, 2006, Mrs. Goff called the sheriff, stating that the abuse had escalated to include their children. Mr. Goff and 63 guns were removed from the home. The following day, Mrs. Goff obtained a civil protection order, and she and the chil-

dren moved to a shelter for victims of domestic violence.

On March 17, 2006, Mr. Goff allegedly called her, stating that he intended to kill her and the children on March 20, 2006. This was a significant date, because it was the anniversary of the first time the couple had had intercourse and was Mrs. Goff's mother's birthday. The next day, armed with two guns, Mrs. Goff went to Mr. Goff's home. Mrs. Goff stated that she had wanted to talk him out of harming the children. Mr. Goff had reiterated his intent to kill her and the children. Mrs. Goff reported that she believed that he was going to kill her right then, and she shot him, emptying both guns of ammunition. Mrs. Goff then raised the affirmative defense of self-defense based on battered woman syndrome.

The state requested to have Mrs. Goff examined by their expert to determine whether her actions were related to BWS. Though Mrs. Goff objected, the trial court ruled that if she was raising the defense, the state had the right to have her evaluated by their expert. The defense expert, Dr. Bobby Miller, opined that Mrs. Goff had symptoms of BWS and that she reasonably believed that she and her children were in imminent danger of being killed. At trial, Mrs. Goff objected to the testimony of the state's expert, because it violated her right to avoid self-incrimination. The state's expert, Dr. Phillip Resnick, did not diagnose BWS. He testified about the many inconsistencies found between what Mrs. Goff told him and what she had told others. He stated that he could not offer an opinion to a reasonable degree of medical certainty regarding BWS, because he could not be certain that Mrs. Goff was telling the truth.

Mrs. Goff waived her right to a jury and was found guilty of aggravated murder, with the judge stating in his ruling that Dr. Resnick's testimony was helpful in reaching his verdict. Mrs. Goff appealed, claiming that information from the state's compelled psychiatric evaluation used in her trial violated her Fifth Amendment right against self-incrimination.

The Fourth District Court of Appeals affirmed Mrs. Goff's conviction, stating that raising the BWS defense and using her own psychiatric expert amounted to waiving her privilege against self-incrimination. She appealed to the Ohio Supreme Court.

#### *Ruling and Reasoning*

Three major issues were considered on appeal: the appropriateness of expert testimony in the BWS de-