

Raising the Question of Competence to Stand Trial After Conviction

Joshua S. Lapin, PsyD

Fellow in Forensic Psychology

Ira K. Packer, PhD

Clinical Professor of Psychiatry

Law and Psychiatry Program

Department of Psychiatry

University of Massachusetts Medical School

Worcester, MA

No Compelling Evidence Presented to Suggest the Defendant Was Incompetent at the Time He Entered a Plea of No Contest

In the case of *State v. Hessler*, 886 N.W.2d 280 (Neb. 2016), after being convicted and sentenced to death for murdering Heather Guerrero, Jeffrey Hessler sought postconviction relief and a writ of *coram nobis* (correcting original judgment when an error has been made), indicating that he was not competent at the time he entered a plea of no contest. The District Court of Bluffs County (Nebraska) denied his motions on the basis that there was not sufficient evidence to suggest he was incompetent. Mr. Hessler's defense counsel and previous psychologist attested that he demonstrated an astute understanding of his legal situation, which the court used as evidence against Mr. Hessler's claims. On appeal, the Supreme Court of Nebraska affirmed the District Court's decision.

Facts of the Case

Jeffrey Hessler was charged with first degree sexual assault of a child, J.B. He pleaded no contest and was sentenced to 30 to 42 years' imprisonment. Concurrent with this charge, he was charged in another case with first-degree murder, kidnapping, first degree sexual assault of a child, and use of a firearm that resulted in the assault and death of Heather Guerrero. Of note, Mr. Hessler's plea of no contest in the J.B. case was a strategy recommended by his defense attorneys, who planned to introduce a double-jeopardy argument so this offense would not be used as an aggravating circumstance in the Guerrero case and result in Mr. Hessler's receiving the death penalty. However,

Mr. Hessler was convicted and sentenced to death for the murder of Heather Guerrero.

Mr. Hessler subsequently filed a writ of error *coram nobis* and a postconviction relief motion regarding what transpired in the case involving the sexual assault on J.B. Mr. Hessler raised several points, including two related to his mental state at the time of his plea. Specifically, Mr. Hessler argued that he was not competent at the time he entered the no contest plea because of his diagnosis of bipolar disorder, severe, with psychotic features, and was not afforded proper due process as a result. He further asserted that his counsel did not effectively assist him in his legal case because his counsel did not fully assess whether Mr. Hessler was competent at the time he entered the no contest plea.

The District Court of Scotts Bluff County (Nebraska) held an evidentiary hearing, that included depositions of his attorneys, a psychologist and psychiatric nurse who treated Mr. Hessler in 2003 (time of his conviction), and a psychiatrist who met with Mr. Hessler in 2012 and 2013 and reviewed his past records. Subsequent to the hearing, the district court denied Mr. Hessler's writ of *coram nobis* as well as his motion for postconviction relief. The court relied on the fact that Mr. Hessler "was able to provide counsel with background information" and "appeared reasonably intelligent and appeared to understand the evidence and strategy of the case" (*Hessler*, p 285). Although the psychologist who treated Mr. Hessler in 2003 noted that he "suffered from bi-polar mood disorder, depression, and paranoid delusional disorder" (*Hessler*, p 290), there was no evidence to suggest that it impaired his competence-related abilities. In addition, although the psychiatrist who examined him in 2012 and 2013 opined that Mr. Hessler was "depressed" and had "paranoid thinking" at the time of his trial, the psychiatrist did not have sufficient information to opine whether his mental health symptoms directly affected his ability to decide rationally to enter a plea of no contest. In sum, there was no evidence to suggest that Mr. Hessler was not competent when entering the no contest plea. Mr. Hessler appealed.

Ruling and Reasoning

The Supreme Court of Nebraska affirmed the decision of the district court. With respect to the

issue of competence, the court referenced the legal standard for competence to stand trial as set forth in *State v. Dunkin*, 807 N.W.2d 744 (Neb. 2012), in which “a person is competent to plead or stand trial if he or she has the capacity to understand the nature and object of the proceedings against him or her, to comprehend his or her own condition in reference to such proceedings, and to make a rational defense” (*Hessler*, p 290). Mr. Hessler failed to present evidence to demonstrate that his mental status was impaired during the time he entered the no contest plea, to the point where it negatively affected the abilities described in *Dunkin*. In line with the rationale provided by the district court, the Nebraska Supreme Court relied on the testimony of Mr. Hessler’s counsel, the psychologist, and psychiatric nurse who treated him during his conviction, and the psychiatrist who met with him in 2012 and 2013. The overall impression was that, although it appeared that Mr. Hessler may have been experiencing symptoms of a mental illness, those symptoms did not interfere with his competence to enter a plea. For example, it was noted that Mr. Hessler understood the evidence against him, his legal charges as well as the consequences of those charges, and the role of his legal counsel, and he responded appropriately to questions being asked of him. Therefore, there was no further evidence to suggest that Mr. Hessler was not competent during the time of his conviction in 2003.

Discussion

Within the legal system, one of the parties who can raise the question of a defendant’s criminal competencies is his defense counsel. In Mr. Hessler’s case, his counsel, who were experienced defense attorneys, did not notice any impairment in his ability to understand his legal situation and make rationally based decisions predicated on the information presented to him. In fact, Mr. Hessler demonstrated understanding of the legal strategy his attorneys were attempting to implement for purposes of avoiding the death penalty and agreed to enter a plea of no contest. However, the fact that Mr. Hessler’s attorneys believed that he was competent to make decisions in his legal case is not enough to render him competent. In cases like this, mental health professionals, such as psychologists or psychiatrists, are often called upon as

experts to formulate an opinion regarding whether a defendant’s mental health symptoms affect his competence-related abilities. The psychologist who met with Mr. Hessler at the time of his conviction documented the presence of mental health symptoms (e.g., paranoid delusional disorder), but did not note any impairment in his ability to understand the proceedings against him. The psychiatric nurse who treated Mr. Hessler indicated that he was taking medication at the time and responded appropriately to questions posed to him. The psychiatrist who examined Mr. Hessler 9 to 10 years later noted the presence of mental health symptoms in 2003, but did not have adequate information to opine retrospectively on his competence to enter his plea. Therefore, given that there was no testimony from his attorneys or mental health professionals that Mr. Hessler had not been competent, there was not sufficient evidence to suggest that Mr. Hessler’s due process rights had been violated.

From the point of view of a forensic evaluator, we are often tasked with demonstrating the link between mental health symptoms and a defendant’s criminal intent. It is prudent to understand that the mere presence of a mental illness, such as schizophrenia or bipolar disorder, does not mean that the defendant is incompetent. For example, a defendant may present with grandiose delusions, believing he is a famous author or movie star; however, if those grandiose delusions do not affect the defendant’s factual and rational understanding of the proceedings against him or his ability to assist counsel effectively, then there is no reason to believe the defendant’s mental health symptoms affect competence. In addition, the psychiatrist in Mr. Hessler’s case also acted appropriately in speaking to the presence of mental illness, but not opining on competence due to a lack of information. As forensic evaluators, although we receive court orders asking us to provide an opinion, it is important to consider all the facts of the case and to see if there is sufficient information present to formulate an opinion. If there is insufficient information, such as in Mr. Hessler’s case, we must formulate only the opinion that the available data support.

Disclosures of financial or other potential conflicts of interest: None.