

person thought. In *Elonis v. United States*, 575 U.S. 723 (2015), the Court ruled that threatening language was not defined by a “reasonable” third party, but instead by the intent of the speaker. Additionally, *Rogers v. United States*, 422 U.S. 35 (1975), reaffirmed that the Court has “long been reluctant to infer that a negligence standard was intended in criminal statutes” (*Rogers*, p 47).

In Justice Alito’s concurrence, which Justice Thomas joined, he said that the majority erred in placing the burden of proof on the government to prove that a prescription was unauthorized in CSA prosecutions. He instead proposed that a physician must provide an affirmative defense to meet the burden of proof that the prescriptions were authorized. He acknowledged that a physician’s prosecution under the CSA may warrant unique treatment when compared with a nonphysician, but he criticized the majority opinion for not specifically saying this.

#### Discussion

The Court’s decision directly affects practice considerations in multiple areas of medicine, including pain management and primary care. There are also important considerations here for the forensic psychiatrist.

An *amicus* brief supporting the petitioner filed by the National Pain Advocacy Center in *Ruan v. United States* (available at [https://www.supremecourt.gov/case\\_documents.aspx](https://www.supremecourt.gov/case_documents.aspx)) states that prosecution of physicians for violation of the CSA has recently increased. It argues that this “objective standard” does not exist in chronic pain management given the particular clinical challenges. Under the negligence standard, physicians and other health professionals who prescribe medications may be more reticent to prescribe pain medications (or other medications) for fear of prosecution. This may harm patients if clinical considerations are secondary to medicolegal concerns. A ruling in favor of a *mens rea* standard may provide a reprieve for physicians’ legal concerns and allow physicians to prioritize individualized patient care. Conversely, the brief also recognized that a subjective standard dependent on the intent of the medical professional could undermine efforts to ensure that medical care adhere to a common standard.

The *mens rea* standard established for CSA prosecution may create a new role for the forensic psychiatrist. Forensic psychiatrists could be asked to evaluate the state of mind and intent of medical professionals in the course of practice. There may be a diminished role

for the expert witness to assess adherence to, or deviation from, objective standards of care in these cases.

## Competency to Proceed Pro Se and Plead Guilty to a Capital Offense

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### A Pro Se Guilty Plea in a Death Penalty Case Does Not Warrant Additional Competency Evaluation

DOI:10.29158/JAAPL.230005L4-23

**Key words:** competency; death penalty; *pro se*; Faretta hearing; guilty plea

In *Noetzel v. State*, 328 So.3d 933 (Fla. 2021), the Supreme Court of Florida reviewed Barry Noetzel’s *pro se* guilty plea to a capital offense. The court held that the trial court did not err in its decisions not to investigate further Mr. Noetzel’s mental state and not to reassess competency following his disclosures of previous psychiatric diagnoses and treatment. The court also ruled that the trial court had acted within its discretion by not forcing counsel on Mr. Noetzel.

#### Facts of the Case

On June 26, 2019, while serving life sentences, Barry Noetzel and Jesse Bell, both 46 years old, executed their plan to kill another inmate, Donald Eastwood. Mr. Noetzel stabbed Mr. Eastwood in the eyes; Mr. Bell choked him. The two men then went to the dining hall for the second part of the plan to kill Correction Officer Newman. They severely stabbed Officer Newman before being stopped. The investigation uncovered written detailed plans for the attacks.

On arrest, both men waived their *Miranda* rights (*Miranda v. Ariz.*, 384 U.S. 436 (1966)) and provided detailed confessions. On October 29, 2019,

they were indicted for premeditated murder and attempted murder.

At arraignment, Mr. Noetzel's court-appointed attorney entered a plea of not guilty; then, Mr. Noetzel addressed the court, requesting a speedy trial and expressing his wish "to enter a plea of guilty right now" (*Noetzel*, p 937). He also asked to represent himself. In January 2020, the trial judge conducted a lengthy *Faretta* (*Faretta v. Cal.*, 422 U.S. 806 (1975)) inquiry, which included asking about any mental health history. Mr. Noetzel noted a history of depression and receiving medication that he had stopped taking, explaining he "wanted to have a clear mind before I got to this point" (*Noetzel*, p 939). To the court's question as to whether the medication would help or hinder his understanding, Mr. Noetzel replied, "No, it just kind of keeps me calm" (*Noetzel*, p 939). The court granted Mr. Noetzel's request for self-representation, and Mr. Noetzel accepted standby counsel; the court found him competent.

The trial judge then accepted Mr. Noetzel's guilty plea, explaining possible consequences, including the death penalty. Although determining that Mr. Noetzel was competent, the judge ordered a competency evaluation, "out of an abundance of caution" (*Noetzel*, p 941). Dr. Umesh M. Mhatre evaluated Mr. Noetzel, found him competent, and diagnosed major depressive disorder, history of substance abuse, and antisocial personality disorder, and noted a history of bipolar affective disorder in the records. Mr. Noetzel had reported symptoms of low moods, insomnia, and anhedonia, and acknowledged having a bad temper and impulsive behavior. The doctor noted that Mr. Noetzel "acknowledges that the medications have helped him and he wants to stay on them as long as he needs to. He knows without the medications his condition could deteriorate" (*Noetzel*, p 942).

In the penalty phase in March 2020, Mr. Noetzel again declined the court's offer of assistance of counsel. The state called witnesses to prove aggravating factors supporting the death penalty. Mr. Noetzel called only himself as a witness and accepted responsibility, stating, "I have no regrets for anything I've done" (*Noetzel*, p 943). He offered nothing additional and maintained that childhood history and past trauma were irrelevant. Over Mr. Noetzel's objection, the state requested a presentence investigation. That report noted a past diagnosis of "paranoid schizophrenia." On March 13, 2020, Mr.

Noetzel was sentenced to death. Mr. Noetzel appealed.

#### Ruling and Reasoning

On appeal, Mr. Noetzel argued that the court failed to conduct an adequate investigation of competency following his disclosure of having been on psychiatric medication, failed to conduct a new *Faretta* hearing after Mr. Noetzel revealed a past diagnosis of paranoid schizophrenia during the sentencing phase of proceedings, and abused its discretion in granting his request for self-representation. The court disagreed.

Regarding the failure to adequately investigate competency, the court ruled that the trial court was not required to conduct a competency hearing in this case, holding that, under *Pate v. Robinson*, 383 U.S. 375 (1966), a competency hearing is only required if the defense or the court has reasonable grounds to believe that the defendant is not competent. The trial court record noted no indication that Mr. Noetzel's behavior raised concern about his competency during any proceedings. The court cited *Godinez v. Moran*, 509 U.S. 389 (1993), ruling that Mr. Noetzel's requests to plead guilty and waive counsel did not automatically require the court to determine competency because the court did not see any indication that he was not competent.

Mr. Noetzel further argued that his disclosure of previous medication for depression during the *Faretta* inquiry gave cause to conduct further investigation. The court disagreed and, citing *Barnes v. State*, 124 So.3d 904 (Fla. 2013), held that history of mental illness alone does not indicate incompetence; without indication of a present lack of competence, no competency hearing is required.

The court further said that there was substantial evidence that the trial court met the dictates of the *Faretta* standard by ensuring that Mr. Noetzel was aware of the dangers and disadvantages of self-representation, and that the record reflected, per *Faretta* that he made his decision knowingly, intelligently, and voluntarily.

Mr. Noetzel also argued that the trial court erred by failing to uphold the "somewhat higher" competency standard to conduct trial proceedings without assistance of counsel, citing the Florida Rule of Criminal Procedure 3.111(d)(3) (2019) amended by the Florida Supreme Court after *Indiana v. Edwards*, 554 U.S. 164 (2008). The court disagreed, citing *Edwards* and Rule 3.111(d)(3) that allows a trial

court to force competent defendants to accept counsel only when severe mental illness interferes with their conduct of the proceedings. The court found that this limited circumstance did not apply in Mr. Noetzel's case; therefore, the trial court did not abuse its discretion by allowing Mr. Noetzel to proceed without counsel.

Mr. Noetzel then argued that the court erred in allowing him to continue self-representation without further investigation after he disclosed a past diagnosis of paranoid schizophrenia. The court disagreed and ruled that past diagnoses are relevant to mitigation, while competency depends on current capacity. The court reiterated that further investigation of competence was not required because the record contains no behaviors raising doubts about Mr. Noetzel's competence. Similarly, the court said that another *Faretta* hearing is required only when the court has cause to reconsider its original determination allowing self-representation (referencing *United States v. Nunez*, 137 F. App'x. 214 (11th Cir. 2005)).

#### Discussion

This case highlights the complexity of psychiatric assessments; it raises the question of whether the mere absence of flagrant symptoms of mental illness in defendants with psychiatric histories is adequate for the determination of competency to plead guilty and to waive their right to counsel. Competency determinations focus on defendants' current thinking, understanding of court proceedings, and the capacity to participate in their defense.

In this case, the court record presents Mr. Noetzel as a reasoned, cooperative, articulate man with clear intent and capacity to plead guilty and represent himself. His court persona stood in stark contrast to the violent behaviors of his crime. The court record identifies none of the symptoms he had previously reported to Dr. Mhatre: no impulsivity, low mood, or bad temper. No one in court questioned whether his request for a speedy trial, permission to enter a guilty plea, and request to represent himself were driven by impulse or low mood. The court record indicates that Mr. Noetzel's reasons for his decisions were not explored. During court proceedings, neither the judge nor the state nor standby defense counsel attorneys expressed any doubts about Mr. Noetzel's guilty plea being "knowing, intelligent, and voluntary."

At the same time, the case reflects courts' efforts to assess competency when there are concerns.

Indeed, the trial court ordered a competency evaluation even after it determined Mr. Noetzel was competent. The psychiatrist, under the narrow scope of the competency evaluation, concluded that Mr. Noetzel understood the charges against him, yet also identified psychiatric symptoms and diagnoses. The court, however, focused on his current behavior. He was steadfast in his plea and in his request to represent himself. The motives for his rush to plead, refusal to offer mitigation, and acceptance of responsibility without remorse were not explored by either the doctor or the court, although it was a possibility that Mr. Noetzel's approach was related to what he told the doctor: his prison circumstances made him depressed. His choices about his case also seemed to facilitate his being sentenced to death.

The court continued to observe Mr. Noetzel but ordered no subsequent psychiatric evaluation even though Dr. Mhatre noted that Mr. Noetzel "knows without medication his condition could deteriorate" (*Noetzel*, p 942). The doctor did not have the opportunity to assess his mental status over time. A psychiatric evaluation could uncover what court observations can miss. If, for example, he had been asked about his motives, and acknowledged directly that his goal was to die to escape the depressing life sentence, the court might have had reason to reconsider his competence. Reasonable arguments can be mounted for either opinion, and, therefore, the question deserves consideration. Competency determination is a safeguard of due process, and it must be deliberate, robust, and probing to serve its purpose. Especially in capital cases when defendants represent themselves, the expertise of forensic psychiatrists may be essential to assure that the determination of competency provides that safeguard.

## Knowledge Required to Convict in Bail Jumping

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