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Supreme Court No. 96653-2

Court of Appeals No. 34859-8-III (Consolidated with 34863-6-III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner,

v.

MATTHEW MCCARTHY, Respondent

IN RE PERSONAL RESTRAINT OF:

MATTHEW MCCARTHY, Petitioner

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR SPOKANE COUNTY

SUPPLEMENTAL BRIEF OF PETITIONER

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I. SUMMARY

Matthew McCarthy has a long, interrelated history of criminal acts and mental health treatment. In what was likely part of a manic episode, he assaulted a woman and forced his way into her home because he believed that his ex-wife was there with another man. After the state charged him with crimes, Mr. McCarthy underwent several psychiatric examinations and two 90-day periods of competency restoration. At the end of this, a jury considered competing psychiatric evidence and found Mr. McCarthy competent to stand trial. Mr. McCarthy proceeded without an attorney for a period, and then went to trial with a newly appointed public defender. He was convicted and then sentenced to life as a persistent offender.

At no point after the competency trial did the judge, attorneys, or Mr. McCarthy challenge his continued competence. Yet, the Court of Appeals reversed his conviction on its belief that the judge should have further questioned competency and ordered additional competency evaluations. The court of appeals acted as an appellate factfinder, failed to give due deference to the trial court's decisions, and failed to give effect to the factual presumption of competence. The State now requests this Court reverse the Court of Appeals' decision and reinstate the judgment and sentence against Matthew McCarthy.

II. ISSUES PRESENTED FOR REVIEW

1. Under what circumstances should a trial court, *sua sponte*, order additional competency evaluations after a jury finding of competence?
2. Whether the trial court's decision not to refer Matthew McCarthy for additional competency evaluations was within its discretion?
3. What remedy is appropriate where the Court of Appeals determines that the trial court failed to order additional competency evaluations?

III. STATEMENT OF THE CASE

On September 21, 2014, Kayla Hierholzer¹ was at home with her two-year-old daughter in Spokane. Wittstock RP 48-49.² When she answered a knock at the door, she was confronted by Matthew McCarthy. *Id.* at 51-52. Mr. McCarthy asked for someone named Ellie, and Ms. Hierholzer told him that she did not know anyone by that name and he had the wrong place. *Id.* at 53. A brief argument ensued, and Ms. Hierholzer attempted to close the door. *Id.* Mr. McCarthy forced his way into the home,

¹ Ms. Hierholzer appears in some of the police reports by her maiden name Gonzalez, which is also used by Mr. McCarthy in his briefing on the PRP.

² The reports of proceedings are contained in five separately paginated sets of volumes that overlap chronologically. Each of the five sets contains multiple proceedings that were heard by the same judge and transcribed by one court reporter. Throughout this petition, the State will reference the reports of proceedings by indicating which court reporter prepared the pertinent volume.

and Ms. Hierholzer hid until he left. *Id.* at 54-57. Mr. McCarthy believed that the Hierholzers had some connection to his ex-wife Laura, who he called Ellie. *Id.* at 157-60. He returned the next day, again looking for Laura. *Id.* at 85. Mr. McCarthy was subsequently arrested and charged with first degree burglary. CP 6.

Because of his substantial mental health history related to criminal matters, Mr. McCarthy was immediately referred for a competency evaluation under RCW 10.77. There, Dr. Lord-Flynn noted that Mr. McCarthy had a detailed understanding of the legal proceedings against him. CP 447-53. They discussed at length Mr. McCarthy's beliefs that the victim was part of an elaborate conspiracy against him. CP 452. Despite those beliefs, he was able to acknowledge that he had no proof of anything, that allegations alone would not carry much weight, and that he would consider these shortcomings in making decisions on the case. *Id.*

Following that evaluation, Mr. McCarthy's public defender, Kari Reardon, gave Dr. Lord-Flynn letters she had received from Mr. McCarthy that indicated that he was no longer able to give consideration to the lack of proof for his beliefs. CP 452. When Dr. Lord-Flynn went to speak to Mr. McCarthy about the issue, Mr. McCarthy became upset at the violation of his attorney-client privilege, and refused to answer follow-up questions. *Id.* Dr. Lord-Flynn concluded that Mr. McCarthy understood the nature of

the proceedings, but that he could not make rational decisions and requested a period of competency restoration. CP 452.

While undergoing restoration, Mr. McCarthy sent numerous letters to Ms. Rearden, asserting that he was competent and asking her to obtain a second opinion. Wittstock RP 6. Because she believed that Mr. McCarthy was not competent, she did not do so. *Id.* at 6. Mr. McCarthy then sent a complaint to the court, at which point Ms. Rearden sought a second opinion. *Id.* She brought in Dr. Debra Brown, who also concluded that Mr. McCarthy was not competent to stand trial. *See* Report of Dr. Brown, CP 161-167. Dr. Brown looked to Mr. McCarthy's paranoia, concerning his attorney, Ms. Rearden, and concluded that he was not competent as a result of his inability to work with Ms. Reardon. CP 167.

Following the restoration period, Dr. Lord-Flynn determined that Mr. McCarthy was competent to stand trial. *See* March 16, 2015 Report, CP 296-302. While Mr. McCarthy continued to express concerns about his current attorney, Dr. Lord-Flynn believed those problems to be specific to his working relationship with Ms. Rearden. CP 300-01. Dr. Lord-Flynn opined that Mr. McCarthy then possessed the capacity to assist in his own defense with a different defense attorney. CP 301. At the subsequent competency hearing, Ms. Rearden presented Dr. Brown's evaluation to undercut Dr. Lord-Flynn's more recent evaluation to argue that

Mr. McCarthy remained incompetent. *See* Wittstock RP 1-15. Ms. Rearden also submitted her own declaration, attesting to her opinion of Mr. McCarthy's mental capacity. CP 169-175. The trial court considered this evidence and ordered a second 90-day stay to further restore competence. Wittstock RP 16-17.

At the end of the second, 90-day period, Dr. Lord-Flynn again evaluated Mr. McCarthy, with Dr. Brown present observing. CP 457. Dr. Lord-Flynn reported his interactions with Mr. McCarthy, as well as his observations and arrived at the conclusion that Mr. McCarthy was competent to stand trial. CP 460-65. Defense counsel opposed this finding, and the matter proceeded to a jury trial on competence.

At the competency trial, Mr. McCarthy continued to maintain that he was competent. Kerbs RP 347. Although, he agreed that there was probably reason to question that at the start of his case. *Id.* at 347-48. He also testified about his mental health, and what happens when he is off medications. *Id.* at 350-52. Finally, he detailed the collapse of his working relationship with his attorney, including her unauthorized disclosure of privileged information. *Id.* at 350-59. Following Mr. McCarthy's testimony, both doctors testified to their opinions, and the jury found Mr. McCarthy competent to stand trial. *Id.* at 373-415 (Dr. Brown's opinion), 515-64 (Dr. Lord-Flynn's opinion), 688 (verdict).

Immediately following the competency trial, Kari Rearden withdrew as counsel. *Id.* at 692. Mr. McCarthy then moved the court to proceed pro se, and Dennis Dressler was appointed as standby counsel. *Id.* at 700, 711-12. Following various motions, Mr. Dressler was appointed as counsel prior to trial. Cochran RP 100. The matter proceeded to trial and the jury convicted Mr. McCarthy of first-degree burglary. Wittstock RP 256. At no point did Mr. Dressler further question Mr. McCarthy's competence.

The case proceeded to appeal, where appellate counsel again raised the issue of Mr. McCarthy's competence at trial, contrary to his wishes. The Court of Appeals reversed the conviction, after finding that the trial court should have questioned Mr. McCarthy's competence during the period between the competency trial and the criminal trial. *See* Opinion.

IV. ARGUMENT

A person is competent to stand trial if he has the capacity to understand the nature of the proceedings against him and he can assist in his own defense. *State v. Coley*, 180 Wn.2d 543, 551-52, 326 P.3d 702 (2014), (*citing* RCW 10.77.050). Appellate courts defer to the trial court's judgment of a defendant's mental competency. *State v. Ortiz*, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985) (*Ortiz I*). Further, considerable weight is to be given to the attorney's opinion regarding his client's competency, particularly as it applies to his ability to assist the defense.

State v. Lord, 117 Wn.2d 829, 901, 822 P.2d 177 (1991), *abrogated on other grounds by State v. Schierman*, 415 P.3d 106 (2018). As a result, determinations of a defendant's mental competency are only reversed upon a finding of an abuse of discretion. *Coley*, 180 Wn.2d at 551. Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Mr. McCarthy enjoyed the full process afforded him under RCW 10.77, culminating in a jury trial and determination that he was competent to stand trial. Once that determination was made, the trial court is bound by that, unless there is a showing that there has been a significant change in the defendant's mental status. *State v. Ortiz*, 119 Wn.2d, 294, 300-01, 831 P.2d 1060 (1992) (*Ortiz II*).

Following his competency trial by jury, Mr. McCarthy began representing himself. He then brought a variety of motions, including those found to be delusional by the Court of Appeals. When those motions were argued, the State questioned the extent to which Mr. McCarthy's delusions could be affecting his decisions. Kerbs RP 715. The trial court considered this, but found no significant difference from the time of the competency trial. Kerbs RP 716. The court specifically noted Mr. McCarthy's understanding of the procedures as well as the scope of his trial preparation

as indicating his ability to understand proceedings and assist in his own defense. *Id.*

The Court of Appeals disagreed with that decision. In its opinion, the Court of Appeals selected passages out of the voluminous record to construct a narrative that Mr. McCarthy was completely free of delusions when the jury found him to be competent, and the subsequent re-emergence of his delusions indicated a decline in his mental condition that should have triggered new competency evaluations. In this way, the Court of Appeals acted as a factfinder, reviewing the record to determine what it believed to be true. This is not the question on appeal. Rather, the sole question is whether the trial court's decision was tenable.

Throughout the record, Mr. McCarthy maintained a fairly consistent level of paranoia and conspiratorial beliefs dating to the inception of the case. The primary dispute between the experts during the course of competency restoration was the effect these beliefs had on Mr. McCarthy's ability to assist in his defense. However, they agreed that Mr. McCarthy had shown no significant change between the time of the first competency hearing and the competency jury trial. Dr. Lord-Flynn's opinion throughout that period was that Mr. McCarthy was able to understand the limitations of available evidence. There is also evidence that Mr. McCarthy was stable on Lithium throughout the proceedings. *See Cochran RP 120.* Tellingly,

Mr. McCarthy testified coherently at trial, and trial counsel never questioned his competence. Wittstock RP 156-205. Further, there is no psychiatric evidence of any deterioration in Mr. McCarthy's understanding of the proceedings or ability to assist his defense. Consequently, the trial court's decision not to order further competency evaluations was within its discretion and should not have been disturbed on appeal.

Remedy on Reversal

Assuming for the sake of argument that the Court of Appeals is correct that the trial court should have revisited the issue of competence, the remedy ordered conflicts with established precedent. It is a fundamental principle that an incompetent person may not stand trial. *Coley*, 180 Wn.2d at 551. However, criminal defendants are presumed to be competent, and the burden to prove otherwise is on the party challenging competence. *Id.* at 552. Upon finding that a question exists as to the defendant's competency at the time of trial, an evidentiary hearing must be conducted to resolve that factual question. *See State v. Tate*, 74 Wn.2d 261, 444 P.2d 150 (1968) (remanding for an evidentiary hearing to determine whether the defendant was competent at the time of trial); *State v. Ortiz-Abrego*, 187 Wn.2d 394, 387 P.3d 638 (2017) (reviewing a post-trial reference hearing on competency during trial).

Mr. McCarthy was found to be competent by a jury. He was subsequently convicted at trial without further questions concerning his competency. On appeal, the Court of Appeals determined that there should have been further questions asked. Upon making that determination, the court is left with an unresolved question whether Mr. McCarthy was competent at the time of trial, and the presumption that he in fact was competent. The only appropriate way to resolve the factual dispute is to order a reference hearing.

V. CONCLUSION

For the above stated reasons, the State asks this Court to reverse the Court of Appeals decision and reinstate the judgment and sentence against Matthew McCarthy or, in the alternative, to order a reference hearing to determine whether Mr. McCarthy was competent at the time of his trial.

Respectfully submitted this 5th day of April, 2019.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent/Petitioner,

v.

MATTHEW S. MCCARTHY,

Appellant/Respondent,

In Re Personal Restraint of:

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Petitioner.

NO. 34859-8-III
Consol w/34863-6-III

CERTIFICATE OF
SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on April 5, 2019, I e-mailed a copy of the Supplemental Brief of Petitioner in this matter, pursuant to the parties' agreement, to:

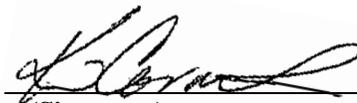
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And mailed a copy to:

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Spokane, WA
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SPOKANE COUNTY PROSECUTOR

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