

Introduction to Competency: Terms and Concepts

Courts, Corrections and Justice Interim
Committee

Speakers: SIMONE VILJOEN, PH.D., STACEY BOONE, M.S., and the

Hon. James A. Hudson

Presenter Introductions

Objectives

- ❖ Provide a framework for understanding the current competency process in New Mexico
- ❖ Provide a general overview of criminal competency terminology and concepts
- ❖ Explore the current criminal competency process from a court procedural perspective
- ❖ Distinguish criminal competency as a legal concept from civil mental health cases

Competent to Stand Trial: Due Process

Notable Cases: Competency to Stand Trial

- ▶ *State v. Linares* (2017)
- ▶ *State v. Rotherham* (1996)
- ▶ *Dusky v. United States* (1960)

Three Prongs to Competency

Prong 1

sufficient present ability to consult with their lawyer with a reasonable degree of rational understanding

Prong 2

a rational as well as factual understanding of the proceedings against them

Prong 3

the capacity to assist in one's own defense and to comprehend the reasons for punishment

Competency Research

▶ **Cox and Zapf (2004)**

- ▶ Courts agree with evaluators' opinions
99.6% of the time

▶ **Robinson and Acklin (2010)**

- ▶ Courts agree with evaluators' opinions
90% of the time

The Intersection of Severe Mental Illness & Criminal Competency

Psychotic Disorders

- ▶ Delusional disorder
- ▶ Brief psychotic disorder
- ▶ Schizophrenia
- ▶ Schizophreniform disorder
- ▶ Schizoaffective disorder
- ▶ Bipolar disorder
- ▶ Depression with psychotic features
- ▶ Psychotic disorder due to another medical condition
- ▶ Substance/Medication-Induced Psychotic Disorder

“Severe Psychiatric Symptomatology”

- ▶ Delusions
- ▶ Hallucinations
- ▶ Disorganized thinking (speech)
- ▶ Disorganized or abnormal motor behavior
- ▶ Negative symptoms
- ▶ Suicidal / homicidal ideation
- ▶ Anxiety
- ▶ Increased / decreased sleep
- ▶ Depressed / elevated mood
- ▶ Concentration difficulty
- ▶ Withdrawal
- ▶ Emotional dysregulation

Delusions

- ▶ Fixed beliefs that are not amenable to change
 - ▶ Variety of themes
 - ▶ Persecutory – the most common
 - ▶ Referential
 - ▶ Somatic
 - ▶ Religious
 - ▶ Grandiose
 - ▶ Bizarre vs nonbizarre
- ▶ Different from a strongly held belief

Hallucinations

- ▶ Perception-like experiences that occur without external stimulus
- ▶ Vivid, clear, feel like normal perceptions
- ▶ Not under voluntary control
- ▶ Can occur under any sensory modality
 - ▶ Auditory is the most common

Disorganized Thinking

- ▶ Quickly switching from one topic to another (loose associations)
- ▶ Answers to questions are unrelated (tangentiality)
- ▶ Incomprehensible (incoherent)
- ▶ Impairs effective communication

Disorganized or Abnormal Motor Behavior

- ▶ Includes a range of behaviors
- ▶ Problems with goal-directed behavior
- ▶ Catatonic behavior
 - ▶ Decrease in reaction to the environment
 - ▶ Rigid posture
 - ▶ Lack of verbal or motor response
 - ▶ Excessive motor activity (catatonic excitement)
 - ▶ Stereotyped movements

Negative Symptoms

- ▶ Diminished emotional expression
- ▶ Avolition
- ▶ Alogia (speech)
- ▶ Anhedonia (pleasure)
- ▶ Asociality (social)

Substance Use & Severe Mental Illness

- ▶ People with substance abuse disorders have more extensive criminal records (Gizzi & Gerkin, 2010)
- ▶ Risk of criminality increases with general and positive psychotic symptoms (Laporth et al., 2009; McKetin et al., 2014)
- ▶ People with substance use disorders are more likely to suffer from mental illness
- ▶ People with mental illness are more likely to use substances
- ▶ Substance use can cause symptoms of mental illness (Chen et al., 2003)
- ▶ Substance use can exacerbate symptoms of mental illness (Batki & Harris, 2004)

Differentiating

Psychotic Disorders

- ▶ No evidence of heavy substance use or withdrawal
- ▶ Psychotic symptoms persist 4 weeks in absence of heavy substance use

Substance-Induced Psychosis

- ▶ Parental substance abuse
- ▶ Drug dependence Visual hallucinations
- ▶ Greater awareness of symptoms
- ▶ Increased suicidal ideation
- ▶ Less severe positive and negative symptoms
- ▶ More positive than negative symptoms: persecutory delusions, delusions of reference, some hallucinations

Differentiating

- ▶ The challenge
 - ▶ Nature of impairment
 - ▶ Substance use
 - ▶ Mental illness
 - ▶ Both
 - ▶ Methamphetamine Considerations
 - ▶ Research has found long term effects of methamphetamine including psychotic symptoms even after lengthy periods of abstinence
 - ▶ Some people recover eventually, others never do

Impairment Impacts Competency

Competency Prongs

- ▶ [1] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
- ▶ [2] a rational as well as factual understanding of the proceedings against him
- ▶ [3] the capacity to assist in his own defense and to comprehend the reasons for punishment

Attention and Concentration

- ▶ Ability to follow court proceedings
- ▶ Acquire new information
- ▶ Focus on dialogue with defense
- ▶ Testify at trial
- ▶ Provide irrelevant information

Impairment Impacts Competency

Competency Prongs

- ▶ [1] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
- ▶ [2] a rational as well as factual understanding of the proceedings against him
- ▶ [3] the capacity to assist in his own defense and to comprehend the reasons for punishment

Speech/Communication

- ▶ Talk over judge and attorney
- ▶ Ability to listen to others
- ▶ Testify relevantly
- ▶ Engage in effective conversation with attorney
- ▶ Maintain relevant communication with Court

Impairment Impacts Competency

Competency Prongs

- ▶ [1] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
- ▶ [2] a rational as well as factual understanding of the proceedings against him
- ▶ [3] the capacity to assist in his own defense and to comprehend the reasons for punishment

Hallucinations

- ▶ Focus on external environment
- ▶ Focus on dialogue with others
- ▶ Focus at hearings and during meetings with counsel
- ▶ Organize thinking
- ▶ Inappropriate affect
- ▶ Misinterpret information

Impairment Impacts Competency

Competency Prongs

- ▶ [1] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
- ▶ [2] a rational as well as factual understanding of the proceedings against him
- ▶ [3] the capacity to assist in his own defense and to comprehend the reasons for punishment

Thought Process

- ▶ Confused and disorganized thinking impairs ability to meet with attorney
- ▶ Concrete thinking prevents assisting counsel
- ▶ Fragmented or irrelevant responses
- ▶ Irrelevant or nonsensical responses
- ▶ Latencies in responses

Impairment Impacts Competency

Competency Prongs

- ▶ [1] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
- ▶ [2] a rational as well as factual understanding of the proceedings against him
- ▶ [3] the capacity to assist in his own defense and to comprehend the reasons for punishment

Thought Content (Delusions)

- ▶ Misinterpret others
- ▶ Grandiose thinking can impair ability to work with counsel
- ▶ Unrealistic thoughts about outcome of case
- ▶ Suspiciousness about others
- ▶ Rationally consider advice and options
- ▶ Willingness to engage with others

Impairment Impacts Competency

Competency Prongs

- ▶ [1] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
- ▶ [2] a rational as well as factual understanding of the proceedings against him
- ▶ [3] the capacity to assist in his own defense and to comprehend the reasons for punishment

Affect and Mood

- ▶ Overestimate or underestimate outcomes
- ▶ Behavioral outbursts
- ▶ React without thinking
- ▶ Motivation to defend self
- ▶ Concentration abilities

Impairment Impacts Competency

Competency Prongs

- ▶ [1] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
- ▶ [2] a rational as well as factual understanding of the proceedings against him
- ▶ [3] the capacity to assist in his own defense and to comprehend the reasons for punishment

Insight and Judgment

- ▶ Resistance to remediations
- ▶ Rationally weigh options and defense considerations
- ▶ Rationally interact with counsel
- ▶ Poorly-reasoned decisions
- ▶ Considering others' perspectives
- ▶ Adjusting behavior based on situations

The Competency/Forensic Evaluation

Forensic Evaluator

- Not all Psychologists can perform Forensic Evaluations
- Training and specialization is required
- Role is to provide information and an opinion to the court

Forensic Evaluators in NM

- State operates under a contract model for forensic evaluators
- Currently about ~22 forensic evaluators in the state
- Contractors often work remotely
- Implications for consistency of reports and quality control

Competency/Forensic Evaluation

- Can take anywhere from 10 to 30 hours to conduct
- Collateral information
- Questions are asked to explore the 3 prongs of competency
- Testing

Competency/Forensic Report

- Diagnosis information is often included but is not required
 - Areas of impairment relevant to competency prongs are of more importance
- The evaluators prepare a report and recommendation for the court

Competency to Stand Trial

- ▶ “what makes an individual competent is...*cognitive organization*” which is the ability to understand, process, and express or communicate information (Zapf, 2009)
- ▶ Cognitive organization is necessary but not sufficient, for trial competency (Zapf, 2009)
- ▶ “The legal fitness concept appears grounded within a cognitive psychological foundation” (Nussbaum et al., 1998)
- ▶ Evaluating cognitive abilities is an essential component of the functional assessment of a defendant’s competency (Grossi, 2003; Zapf, 2009)

“Thus, the fundamental task for a forensic examiner is to **relate** any psychopathological or cognitive **difficulties to** possible **impairments** in the defendant’s psycholegal abilities” (Skeem & Golding, 1998)

Summary

- ▶ Most commonly identified issues raised for CST
 - ▶ Psychosis
 - ▶ Substance Abuse
 - ▶ Cognitive Issues
- ▶ CST evaluations are not quick or easy
- ▶ Video evaluations and assessments are a viable and sustainable practice for rural areas

DISORDER  **INCOMPETENT**