



CLERK OF THE COURT

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 THE STATE OF NEVADA,)

5 Plaintiff,)

6 v.)

7 DIPAK KANTILAL DESAI, #1240942)

8 Defendant.)

Case No.: 10C265107-1

Dept. No.: XXV

Date of Hearing: January 27, 2012

Time of Hearing: 9:00 a.m.

9 _____)
10 **FINDING OF COMPETENCY**

11 IT APPEARING TO THE COURT that, on or about March 24, 2011, the Sheriff
12 conveyed Defendant, Dipak Kantilal Desai ("Defendant"), into the custody of a designee of
13 the Administrator of the Division of Mental Health and Developmental Services of the
14 Department of Health and Human Services for detention and treatment at Lake's Crossing
15 Center, the Division's secured facility, pursuant to NRS 178.425(1);

17 IT FURTHER APPEARING that, upon Defendant's admission to Lake's Crossing
18 Center, the Administrator's designee appointed a licensed psychiatrist, Dr. Steven
19 Zuchowski, and a licensed psychologist, Dr. Sally Farmer, from the treatment team, as well
20 as a licensed psychiatrist, Dr. Lindell Bradley, who was not a member of the treatment
21 team, all three of whom were certified pursuant to NRS 178.417, to evaluate the current
22 competency of Defendant, pursuant to NRS 178.455(1);

24 IT FURTHER APPEARING that, in a letter dated September 20, 2011, the
25 Administrator's designee reported in writing to the Court that Defendant is of sufficient
26 mentality to be able to understand the nature of the criminal charge against him and, by
27

28 **KATHLEEN E. DELANEY**
DISTRICT JUDGE

DEPARTMENT TWENTY FIVE
LAS VEGAS NV 89155

1 reason thereof, is able to assist his counsel in the defense interposed upon the trial or
2 against the pronouncement of the judgment thereafter, pursuant to NRS 178.450(2);

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4 IT FURTHER APPEARING that Defendant requested, and the Court did, in fact,
5 hold a hearing on January 27, 2012, at which the District Attorney and Defendant's counsel
6 were given the opportunity to examine the Lake's Crossing Center evaluators on their
7 respective reports, pursuant to NRS 178.460(1); and

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9 IT FURTHER APPEARING that the Court gave Defendant the opportunity at the
10 time of the January 27, 2012 hearing to present testimony of any psychologist or
11 psychiatrist who may have examined Defendant subsequent to his return from Lake's
12 Crossing Center and who would opine that Defendant was not able to understand the
13 charges against him or assist counsel in his defense despite his treatment at Lake's Crossing
14 Center, but Defendant neither identified nor called an additional witness; now, therefore:

15 THE COURT FINDS, pursuant to NRS 178.460(3), that Defendant is competent to
16 stand trial in the above-entitled matter. The testimony provided by the Lake's Crossing
17 Center evaluators at the January 27, 2012 hearing consistently and overwhelmingly
18 established Defendant's sufficient present ability to understand the charges against him and
19 to assist counsel in his defense, and Defendant provided no credible evidence to the
20 contrary. None of the evaluators dispute the existence of cognitive deficits secondary to
21 two strokes suffered by the Defendant in September, 2007 and July, 2008, respectively.
22 Following approximately six months of observation of the Defendant between March and
23 September, 2011, however, all three evaluators independently stated to a reasonable degree
24 of medical certainty that Defendant is competent and obviously exaggerating his symptoms.
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27 During Defendant's extended stay at Lake's Crossing Center, the evaluators
28 regularly observed Defendant's behavior and functional abilities both directly and

1 indirectly, subjected the Defendant to multiple independent psychological tests, and
2 thoroughly reviewed all of Defendant's medical and legal records. At no time, other than
3 when directly questioned by his evaluators, did Defendant actually exhibit any cognitive
4 deficits. As stated on page 5 of Dr. Farmer's report, "[Defendant] easily learned the rules,
5 restrictions, and schedule in place in the milieu. He has been responsive to staff direction
6 and cooperative with all procedures. Unlike Lake's Crossing Center clients with serious
7 memory problems, he has always found his room and various facilities (including the
8 kitchen, laundry, canteen, barber shop and classrooms) without difficulty." Dr. Farmer
9 adds later on the same page, "[Defendant] has been compliant with his medication regimen,
10 and has been able to solve problems (such as receiving food that is not on his vegetarian
11 diet) that have arisen in his daily life." Similar observations of Defendant's unimpaired
12 memory function and problem solving abilities were reported by Drs. Zuchowski and
13 Bradley.
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16 The only impediment to competency asserted by the Defendant is self-reported
17 memory loss, secondary to two strokes, regarding facts relevant to his criminal charges.
18 Memory loss itself, even if true, is not a bar to prosecution of an otherwise competent
19 Defendant. Further, there is no indication in the present record that Defendant and his
20 counsel would be unable to reconstruct the events of the alleged crimes for which he is
21 accused or to raise any possible defenses to the evidence against him. Finally, Defendant's
22 performance on at least one independent psychological test administered to him during his
23 tenure at Lake's Crossing Center, the Test of Memory Malingerer (TOMM), which is used
24 to distinguish between the truly memory impaired and malingerers, suggested Defendant
25 was feigning his memory deficits to greater degree than would be expected from the
26 neurological damage caused by his strokes.
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1 For all of the reasons stated herein, and based on the arguments of counsel and the
2 record before the Court,

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4 IT IS HEREBY ORDERED that Defendant, Dipak Kantilal Desai, return to
5 Department XIV of the Eighth Judicial District Court to proceed with adjudication of the
6 instant criminal case in the normal course;

7 IT IS FURTHER ORDERED that the Court's Order to Release and Readmit to Bail
8 filed on September 29, 2011, shall remain in effect until further notice by the Court; and

9 IT IS FURTHER ORDERED that all Exhibits admitted into evidence at the time of
10 the January 27, 2012 hearing shall be entered into the official record of the proceedings.
11 The Court can find no applicable statutory or regulatory requirement, or otherwise
12 compelling privacy or safety interest, that outweighs the public interest in access to the
13 Court record.
14

15 Dated this 2nd day of February, 2012.

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17 
18 KATHLEEN E. DELANEY
19 District Court Judge

20 **CERTIFICATE OF SERVICE**

21
22 I hereby certify that on the date filed, this **FINDING OF COMPETENCY**
23 was E-Served, mailed, or a copy placed in the attorney folders in the Clerk's Office to:

24 Michael Staudaher, Esq., Chief Deputy District Attorney – District Attorney's Office
25 Richard A. Wright, Esq. – Wright Stanish & Winckler

26
27 
28 Cindy Springberg
Judicial Executive Assistant