



University of
Massachusetts
Amherst

Assessing dimensions of competency to stand trial - Construct validation of the ECST-R

Item Type	article;article
Authors	Rogers, R;Jackson, RL;Sewell, KW;Tillbrook, CE;Martin, MA
DOI	10.1177/1073191103259007
Download date	2024-11-05 19:01:23
Link to Item	https://hdl.handle.net/20.500.14394/42636

Assessing Dimensions of Competency to Stand Trial

Construct Validation of the ECST-R

Richard Rogers

Rebecca L. Jackson

Kenneth W. Sewell

University of North Texas

Chad E. Tillbrook

University of Massachusetts

Mary A. Martin

University of North Texas

Four decades of forensic research have left unanswered a fundamental issue regarding the best conceptualization of competency to stand trial vis-à-vis the Dusky standard. The current study investigated three competing models (discrete abilities, domains, and cognitive complexity) on combined data (N = 411) from six forensic and correctional samples. Using the Evaluation of Competency to Stand Trial–Revised (ECST-R), items representative of the Dusky prongs were used to test the three models via maximum-likelihood confirmatory factor analyses (CFA). Of the three, only the discrete abilities model evidenced a good fit, indicating that competency to stand trial should consider separately each defendant’s factual understanding of the proceedings, rational understanding of the proceedings, and ability to consult with counsel. ECST-R competency scales, based on the current CFA, have excellent alphas (.83 to .89) and interrater reliabilities (.97 to .98).

Keywords: competency, ECST-R, Dusky standard

Psychologists are increasingly involved in the forensic assessment of criminal and civil issues. Beyond their clinical expertise, psychologists constitute a driving force in the development of specialized, psychometrically sound measures to address psycholegal issues. Within the criminal domain, referrals for competency to stand trial predominate with estimates between 50,000 (Skeem, Golding, Cohn, & Berge, 1998) and 60,000 (Bonnie & Grisso, 2000) evaluations annually. Despite this predominance, more than half of clinicians specializing in forensic practice either rarely (< 10%) or never use competency measures (Borum & Grisso, 1995).

A major challenge for competency evaluations is the systematic appraisal of the legal criteria as articulated in *Dusky v. United States* (1960; hereinafter *Dusky*). This introduction begins with an examination of the *Dusky* standard and discusses several models for operationalizing its relevant criteria. Next, competency measures are evaluated regarding their abilities to establish dimensions congruent with *Dusky*. Finally, the current research is introduced as a study to test competing models via confirmatory factor analysis (CFA).

Dusky Standard

In 1960, the Supreme Court articulated the legal standard for competency to stand trial in the landmark *Dusky* decision. Encapsulated in a single sentence, *Dusky* delineated the legal criteria: “The test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him” (p. 789). In subsequent cases (e.g., *Cooper v. Oklahoma*, 1996; *Pate v. Robinson*, 1966; *Riggins v. Nevada*, 1992), the Supreme Court has consistently upheld the *Dusky* standard and even extended its application to *pro se* cases in which defendants act as their own counsel (*Godinez v. Moran*, 1993). Whereas the American Bar Association (1989) argued that *Drope v. Missouri* (1975) broadened competency to contain the encompassing phrase “otherwise assist in [their] defense” (p. 170), this conclusion seems unwarranted. Despite a passing remark, “assist in preparing his defense,” the court explicitly embraced the *Dusky* standard. In summary, the *Dusky* standard has provided the constitutionally necessary criteria for competency to stand trial for more than four decades (Grisso, 2003).

Models for competency to stand trial can be conceptualized as *extrapolated* or *explicit* models. Extrapolated models go beyond the legal criteria delineated by the *Dusky* standard to provide inferences about what might be or should be included in competency decisions. In contrast, explicit models attempt to operationalize the *Dusky* standard.

As an influential proponent of an extrapolated model, Bonnie (1992, 1993) theorized that competency should be divided into two domains, foundational competency and decisional competency, with elaborate hypotheses about the abilities needed for each prong. As a further example, Miller (2003) goes beyond the strict criteria of *Dusky* to hypothesize about volitional abilities that are defined very broadly as “the capacity to utilize information appropriately in one’s own defense and to function effectively in the legal environment” (p. 187). Finally, Abrams (2002) speculated that the ability to communicate was a fundamental component of competency to stand trial. Presumably, such communications extend beyond the defense counsel to such matters as the ability to provide persuasive testimony. The strength of these extrapolated models is that they stimulate debate and even research on competency to stand trial. The obvious limitation is their extralegal nature, which differs fundamentally from the *Dusky* requirements of forensic practice.

Rogers (2001) summarized three explicit models of competency to stand trial based on the *Dusky* standard. These competing models are outlined as follows:

- The discrete-abilities model operationalizes each component of *Dusky*: (a) rational ability to consult, (b) factual understanding of the proceedings, and (c) rational understanding of the proceedings. Clinical researchers (e.g., Grisso, 2003; Otto et al., 1998; Rogers, Grandjean, Tillbrook, Vitacco, & Sewell, 2001) typically subscribe to this model. Its primary advantage is its degree of specification in delineating separate components.
- The domains model capitalizes on the *Dusky* sentence structure. Syntactically, this categorization is based on the hyphenation between (a) rational ability to consult and (b) factual and rational understanding of the proceedings. This model is favored by some legal scholars (e.g., Melton, Pettila, Poythress, & Slobogin, 1997; Shuman, 1996). Its primary advantage is its division of competency into two related domains.
- The cognitive-complexity model distinguishes two components based on the necessary level of cognitive abilities: (a) factual understanding and (b) rational abilities. Factual understanding generally involves the simple recall of overlearned material. In contrast, rational abilities often require complex cognitive processes that involve analyses, integration of data, and complicated decisions (see, e.g., Bonnie, 1992). In addition, factual understanding appears less vulnerable to the effects of severe psychopathology. Its primary advantage is its conceptual elegance in appreciating the differing cognitive capacities required by the *Dusky* standard.

Despite more than three decades of research on competency measures, investigators have not systematically evaluated the usefulness of these explicit models in operationalizing the *Dusky* criteria. The next section selectively examines competency measures, with a focus on underlying dimensions and their congruence with the *Dusky* standard.

Competency Measures

Following Robey’s (1965) seminal checklist, the first generation of formal competency measures emerged in the 1970s. Under the aegis of National Institute of Mental Health (NIMH), the first two measures were produced, the Competency Assessment Instrument (CAI) (Lipsitt, Lelos, & McGarry, 1971) and Competency Screening Test (CST) (McGarry, 1973). The CAI was designed to measure 13 functions related to competency to stand trial. Although its functions appear to be related to the *Dusky* prongs, Grisso’s (2003) recent review did not include any factor-analytic research. Moreover, the CST was formulated to address abilities that are not directly parallel to the *Dusky* prongs (see Grisso, 2003). Efforts to establish sta-

ble solutions for the CST have proved unsuccessful; six-factor (Laboratory of Community Psychiatry, Harvard Medical School, 1973), three-factor (Bagby, Nicholson, Rogers, & Nussbaum, 1992) and two-factor (Ustad, Rogers, Sewell, & Guarnaccia, 1996) solutions are not stable and do not correspond to the *Dusky* standard.

The Georgia Court Competency Test (GCCT), originally developed by Wildman et al. (1980), has been subjected to extensive factor-analytic work. Originally conceptualized as two factors, a three-factor model was tested and further supported via congruence analysis (Bagby et al., 1992). Later attempts to confirm this factor solution via CFA proved unsuccessful, which may be partially the result of the divergence of samples—competency-restoration sample (Ustad et al., 1996) and mentally disordered offenders (Rogers, Ustad, Sewell, & Reinhart, 1996). Because of the GCCT's item coverage, *Dusky*'s consult-with-counsel prong is poorly represented in all the factor solutions.

Second-generation competency measures began with the commercial publication of the MacArthur Competency Assessment Tool—Criminal Adjudication (MacCAT-CA) (Poythress et al., 1999). Originally designed as a research measure to test Bonnie's extrapolated theory of competency (Bonnie et al., 1997), the MacCAT-CA was subsequently revamped and published as a competency tool. Its extensive use of hypothetical case information appears discrepant with the *Dusky* requirements that focus specifically on the defendant's own pending case. Regarding dimensions of competency, the test manual neglected to report whether the MacCAT-CA scales¹ are measuring distinct constructs via intercorrelations or factor analysis (Grisso, 2003, p. 98). A principal-axis factoring (PAF) by Rogers et al. (2001) found some support for a three-dimension model with variable correspondence to the *Dusky* prongs. The MacCAT-CA's strength is the rational-understanding prong (i.e., the Appreciation scale), which appears to represent one strong dimension. In contrast, the consult-with-counsel prong (i.e., the Reasoning scale) does not appear to be unidimensional; only five of eight designated items load on this dimension, which also includes several nondesignated items. Although moderately promising, these results must be rigorously evaluated via CFA before any firm conclusions can be drawn.

The current investigation focuses on the Evaluation of Competency to Stand Trial—Revised (ECST-R) (Rogers, Tillbrook, & Sewell, 1998) that was explicitly designed to address competency evaluations via the *Dusky* standard. In the development of the ECST-R, five recognized experts on competency to stand trial provided prototypical ratings of clinically relevant constructs (Rogers, 2001). On a 7-point rating scale, constructs were only retained if their average ratings were at least moderately high (> 5.00)

in prototypicality. Mean prototypical ratings were 5.70 for factual understanding, 6.36 for rational understanding, and 6.04 for rational ability to consult. Rogers et al. (2001) conducted a PAF on ECST-R items and subitems, which resulted in a two-factor solution that corresponded to the cognitive-complexity model of *Dusky*.

In summary, more than three decades of research on competency measures has yielded surprisingly few positive findings regarding their underlying dimensions and correspondence to *Dusky*. In general, solutions appear to be unstable and incongruent with the *Dusky* prongs. Equally concerning, confirmatory factor analyses have produced consistently poor model fits, irrespective of the particular measure or the *Dusky* model.

Current Investigation

One advantage of the ECST-R over other competency measures is its use of prototypical analysis to select items that are strongly representative of the *Dusky* prongs. This feature minimizes the inclusion of irrelevant variables that may obscure our evaluation of the *Dusky* models. With prototypical items, we are able to test via CFA the three competing models: discrete abilities, domains, and cognitive complexity. CFA is especially useful in testing the a priori models of latent variable structure, as found with *Dusky* alternatives. For the optimal *Dusky* model, we developed scales based on the ECST-R factors and tested their scale homogeneity and interrater reliability.

METHOD

Samples

The current study uses an amalgamation of ECST-R samples to ensure a broad representation of competency referrals, mentally disordered offenders awaiting trial, and potential feigners. For this purpose, the study utilizes the two earlier samples reported in Rogers et al. (2001), that is, Tillbrook's (2000) competency cases and Rogers and Grandjean's (2000) mentally disordered offenders. We augmented these data from a feigning study of the ECST-R that includes three samples: inpatients in a competency restoration program, jail detainees under standard instructions, and jail detainees feigning incompetency to stand trial. Finally, we included an additional competency referral sample. These six samples are summarized below:

Competency cases. The Tillbrook (2000) sample of competency cases ($n = 70$) was drawn from court referrals in Alabama and inpatient competency cases from maximum security hospitals in Alabama and Florida. With a

mean age of 35.50 ($SD = 11.84$), this male sample was primarily African American (65.7%) with fewer European Americans (32.8%).

Mentally disordered offenders. The Rogers and Grandjean (2000) sample ($n = 100$) was mentally disordered offenders on a jail treatment unit. With a mean age of 34.7 ($SD = 8.81$), this male sample was predominantly European Americans (67.0%) with smaller representations of African Americans (23.0%) and Hispanic Americans (4.0%).

Competency restoration. This sample ($n = 56$) was composed of defendants in a competency restoration program at North Texas State Hospital in Vernon, Texas. Consisting predominantly of males (82.1%) with a mean age of 37.29 ($SD = 12.04$), its ethnic composition was mostly African American (44.6%), European American (35.7%), and Hispanic American (19.6%).

Feigning incompetency. This sample ($n = 52$) was recruited from a Texas jail as part of a simulation study of the ECST-R. The individuals were instructed to feign incompetency with monetary incentives. The sample had slightly more females (51.9%) with an average age of 29.75 years ($SD = 7.19$). Regarding ethnic representation, the sample was primarily European American (69.2%) with smaller percentages of African American (19.2%) and Hispanic American (3.8%).

Jail detainee. This sample ($n = 44$) was recruited from the same Texas jail as honest controls for the simulation study. With a slightly higher percentage of males (58.1%), the sample's mean age was 32.14 ($SD = 8.45$). Regarding its ethnic composition, the sample was 59.1% European American with smaller representations of African American (27.3%) and Hispanic American (9.1%).

Competency referrals. As an archival sample ($n = 89$), psychologists from four forensic centers in Illinois, Massachusetts, New York, and North Carolina provided ECST-R protocols for competency referrals. The sample was mostly males (85.4%) with a mean age of 35.26 years ($SD = 10.86$); ethnically, the sample was composed of African Americans (31.5%), European Americans (49.4%), and Hispanic Americans (13.5%).

Measure

Previous studies included a range of psychological measures addressing psychopathology (e.g., Schedule of Affective Disorders and Schizophrenia—Change Version [SADS-C]) (Spitzer & Endicott, 1978), competency to stand trial, and response styles. A separate investigation (Rogers, Jackson, Sewell, & Harrison, 2003) examines the usefulness of the ECST-R Atypical scale as a screen for

feigning. The current study is focused ECST-R competency scales and their correspondence to the *Dusky* standard.

ECST-R. The ECST-R is a semistructured interview designed to assess the *Dusky* standard and screen for potential malingering. The ECST-R has three competency scales that correspond to the *Dusky* prongs: Consult with Counsel (CWC), Factual Understanding (FAC), and Rational Understanding (RAC). These competency scales were constructed with simple clear inquiries ($M = 7.67$ words) with concomitant ratings. As noted by Rogers et al. (2001), the scales demonstrate moderate to excellent alpha (.72 to .90) and a high level of interrater reliability (.97 to 1.00).

Procedure

All archival data were collected with approval of the University of North Texas Institutional Review Board. Data received from outside institutions were completely de-identified prior to their transfer to the current investigators. Release of data from North Texas State Hospital was also approved by Texas Department of Mental Health and Mental Retardation (TDMHMR) Central Office Institutional Review Board. With the exception of archival data, all participants gave written informed consent prior to their involvement in the studies.

For purposes of interrater reliability, 15 cases were selected from the competency restoration sample. Reliability cases were selected nonsystematically based on the availability of two independent evaluators. These data were reported on factor-derived scales corresponding to the *Dusky* prongs.

The ECST-R was administered under standard (honest) instructions for five of the six samples. The sole exception was the Feigned Incompetency sample, which was given instructions and a financial incentive to feign incompetency to stand trial. Prior to data analysis, manipulation checks were used to exclude any participants who did not follow the instructions or put little to no effort into feigning. The resulting sample ($n = 52$) is described above.

The order of administration varied across studies and samples. For competency restoration and competency restoration samples, forensic psychologists determined the order of test administration in relationship to the defendants' specific issues and needs. For the competency cases sample, the ECST-R was administered first, followed by the MacCAT-CA. For the mentally disordered offenders sample, the SADS-C was administered first, followed by three CST measures (i.e., the ECST-R, GCCT, and MacCAT-CA) presented in a counterbalanced order and, finally, the Structured Interview of Reported Symptoms (SIRS) (Rogers, Bagby, & Dickens, 1992). For the simula-

tion study (i.e., feigned-incompetency and jail-detainee samples), the administration of measures was the same across honest and feigning conditions; that is, the ECST-R was administered first, followed by the SADS-C and the Miller Forensic Assessment of Symptoms Test (M-FAST) (Miller, 2001).

RESULTS

CST evaluations are conducted in a range of forensic and correctional settings with defendants that vary widely by clinical condition (e.g., severe Axis I disorders to generally unimpaired functioning) and by motivation (e.g., genuine disorders to blatant malingering). As a rigorous test of real-world applications, the three a priori competency models were assessed with heterogeneous offender groups.

The original CFA by Rogers et al. (2001) entered both ECST-R items and subitems in testing the model fit. In the current evaluation of competency models, our purpose was to assess the latent dimensions of *Dusky* prongs. We did not want to capitalize on correlated subitems (e.g., verdicts and sentencing as parts of the judge's duties) and, therefore, limited our analysis to the item level. Importantly, ECST-R items were scored by the most impairment evidenced on any subitem. As a specific example, a defendant may understand some duties of the prosecutor but lack the fundamental ability to understand the prosecutor's role in the adversarial process (e.g., a conviction of the defendant). Any composite scoring (e.g., the average of subitems) would likely obscure such critical evidence of incompetency.

Hu and Bentler (1998, 1999) recommended several relative-fit indices—the Comparative Fit Index (CFI) and Robust Comparative Fit Index (RCFI) with the RCFI working especially well with the less-than-optimal distributions of clinical data (Bentler, 1995)—that reject poorly specified models. For absolute indices, Hu and Bentler recommended the Standardized Root Mean Square Residual (SRMR) and the Root Mean Square Error of Approximation (RMSEA).

We tested the three competency models (i.e., discrete abilities, domains, and cognitive complexity) with maximum-likelihood CFAs (see Table 1). One multivariate recommendation was provided for the discrete-abilities model; Item 12 addressed the potential risks of communicating with the prosecutor without the benefit of counsel. Clearly, defendants needed to have factual understanding of the adversarial process to understand the inherent risks. Therefore, we followed the multivariate recommendation. The discrete-abilities model achieved a moderately good fit; the RCFI met the .90 benchmark

(Dunn, Everitt, & Pickles, 1993) and the absolute fit indices indicated a good fit (i.e., SRMR = .06) or a marginally good fit (RMSEA = .09).

The two-factor competency models yielded less-than-adequate fits (see Table 1). Implementation of multivariate recommendations did not achieve adequate fits for these models. Problems were mostly observed with the relative-fit indices. For instance, the RCFI fell short of a good fit for the domains (.79) and the cognitive-complexity (.86) models. Among the two-factor models, the domains model represented a significantly poorer fit than the cognitive-complexity model ($\chi^2_{\text{change}}[1] = 105.50, p < .01$).

The factor loadings and error terms for the discrete-abilities model were subsequently examined (see Table 2). Each item loaded significantly on its designated factor. In general, the magnitude of these loadings was high; the averages for each factor ranged from .67 to .75. In measuring the closely related dimensions embodied in the *Dusky* standard, we expected that factors would be substantially correlated. We found moderate to moderately high correlations (F_1 to $F_2 = .68$; F_1 to $F_3 = .83$; F_2 to $F_3 = .75$). Given the magnitude of these intercorrelations, we tested a global one-factor model that subsumes the three *Dusky* prongs. As reported in Table 1, the global model represented a poor fit for the data based on both relative- and absolute-fit indices.

The CFA results for the three-factor discrete-abilities model are important in their own right. For forensic practice, we also examined whether ECST-R competency scales derived from the *Dusky* prongs would evidence scale homogeneity and reliability. Toward this objective, we found consistently high alpha coefficients (.83 to .89) and moderate interitem correlations (see Table 3). Because average interitem correlations can obscure negligible or even negative findings, we inspected all interitem correlations. We found no correlations below Clark and Watson's (1995) criterion (i.e., $r_s < .15$). In addition, the ECST-R evidenced excellent interrater reliability on both item (M r_s of .89, .97, and .98) and scale (r_s of .97, .98, and .98) levels.

DISCUSSION

A major challenge facing competency measures is whether the item development sufficiently captures the relevant functional abilities necessary to assess a specific standard, such as *Dusky* (Grisso, 2003). A mismatch between competency items and the *Dusky* standard thwarts any effort to establish construct validation. In this regard, the ECST-R is the first competency measure to evaluate formally the representative of its items to *Dusky*'s specific prongs. A prototypical analysis with recognized experts

TABLE 1
Testing the Dusky Models with the ECST-R

<i>Models (factors)</i>	χ^2	<i>NFI</i>	<i>NNFI</i>	<i>CFI</i>	<i>RCFI</i>	<i>SRMR</i>	<i>RMSEA</i>
Discrete abilities (3)	291.82	.87	.88	.89	.90	.06	.09
Domains (2)	456.53	.78	.78	.81	.79	.07	.12
Cognitive complexity (2)	349.88	.83	.84	.86	.86	.06	.10
Global (1)	424.18	.75	.75	.78	.76	.07	.12

NOTE: ECST-R = Evaluation of Competency to Stand Trial–Revised; χ^2 = Satorra-Bentler scaled chi-square; NFI = Normed Fit Index; NNFI = Non-Normed Fit Index; CFI = Comparative Fit Index; RCFI = Robust Comparative Fit Index; SRMR = Standardized Root Mean Square Residual; RMSEA = Root Mean Square Error of Approximation.

TABLE 2
Confirmatory Factor Analysis of the ECST-R Three-Factor Discrete-Abilities Model

<i>Scales and Items</i>	<i>Factor Loadings</i>			
	<i>F1: Consult</i>	<i>F2: Factual</i>	<i>F3: Rational</i>	<i>Error</i>
Consult with counsel				
1. Psychotic perceptions of attorney	.82			.57
2. Irrational expectations of attorney	.80			.61
3. Gross misperception of attorney's goals	.60			.80
4. Impaired ability to agree/disagree with attorney	.47			.88
5. Impaired ability to resolve conflicts with attorney	.67			.75
6. Impaired communications	.64			.77
Factual understanding of proceedings				
7. Judge's responsibilities		.78		.63
8. Defense attorney's responsibilities		.85		.53
9. Prosecutor's responsibilities		.80		.61
10. Understanding of criminal charges		.67		.75
11. Jury's responsibilities		.78		.63
12. Risks of talking with the prosecutor		.63		.78
Rational understanding of the proceedings				
13. Psychotic decision: talking to prosecutor			.86	.51
15. Psychotic decision: testifying			.92	.39
17. Psychotic decision: plea bargaining			.86	.51
18. Impaired judgment: best/worst outcomes			.74	.67
19. Impaired judgment: likely outcome			.67	.74
20. Psychotic/strange courtroom experiences			.64	.77
21. Unmanageable courtroom behavior			.41	.91
Mean factor loadings	.67	.75	.73	

NOTE: ECST-R = Evaluation of Competency to Stand Trial–Revised. Items 14 and 16 had virtually no variance (i.e., < 1.0% with any impairment) and were not used in the confirmatory factor analyses (CFA).

provided a relevant item pool for investigating the underlying factor structure of the ECST-R with concomitant implications for our conceptualization of the *Dusky* standard.

Initial factor analysis (Rogers et al., 2001) of the ECST-R suggested a two-factor solution that was based on the cognitive-complexity model. However, this analysis appeared to capitalize on subitem relationships and did not test an a priori model of *Dusky*. In contrast, the current analysis tested the original rationally based model of competency to stand trial and examined deficits at the item level that are directly germane to the *Dusky* standard. Based on the current literature, three competing models were tested with only the discrete-abilities model achieving a satisfactory fit.

We found three closely related, yet independent, dimensions underlying the ECST-R measurement of the *Dusky* standard. Given the moderate to moderately high intercorrelations among the ECST-R factors, the possibility of a global one-factor solution could be entertained (see Table 1). However, this option proved entirely unsuccessful (e.g., relative-fit indices below .80), providing convincing evidence that *Dusky* is better construed as three correlated prongs.

A major advantage of the discrete-abilities model is that it provides forensic psychologists with a useful template for conducting competency examinations. These experts can operationalize and evaluate each *Dusky* prong without substantial concerns that a component of compe-

TABLE 3
Alpha Coefficients, Mean Interitem
Correlations, and Interrater Reliabilities
for ECST-R Competency Scales

Scale	Items	Scale Homogeneity ^a		Interrater Reliability ^b	
		Alpha	M Interitem rs	Items	Scale
Consult with counsel (CWC)	6	.83	.45	.98	.99
Factual understanding (FAC)	6	.87	.56	.97	.98
Rational understanding (RAC)	7	.89	.53	.89	.99

NOTE: ECST-R = Evaluation of Competency to Stand Trial-Revised.
a. $n = 411$.
b. $n = 15$.

tency is not sufficiently addressed. Although closely related ($r = .83$), the capacity to consult with counsel can be separated from the broader construct of rational understanding. Regarding the latter, the defendant's capacity to appreciate his or her circumstances and consider potential decisions (e.g., testifying or plea bargains) can be assessed as a discrete dimension. Likewise, factual understanding, which is often the basis of rational understanding, can also be assessed separately via the ECST-R.

The CFA results clearly favor the discrete-abilities model of *Dusky* that has substantial support among clinical researchers (e.g., Grisso, 2003; Poythress et al., 1999; Rogers et al., 2001). The ideal would be to test the three competing models of *Dusky* across a range of competency measures. As described in the introduction, however, this comparative analysis is not feasible. Other competency measures lack the systematic development of items representative of the individual *Dusky* prongs. Based on the current analysis, the domains model represented a poor fit for the data, substantially poorer than the cognitive complexity model. Despite its methodological limitation,² the two-factor model of the MacCAT-CA was completely inconsistent with the domains model (see Rogers et al., 2001). The current data supplemented by MacCAT-CA exploratory factor analysis offer no support for the domains model. Legal scholars (e.g., Melton et al., 1997) may wish to integrate these empirical findings into their future formulations of the *Dusky* standard.

In summary, the current study provides solid support via confirmatory factor analysis of the discrete-abilities model of *Dusky*. The ECST-R competency scales, based on the individual *Dusky* prongs, have excellent scale homogeneity with high alphas and each item contributing positively to the respective scales. Integrating past data on prototypical analysis by recognized experts with the cur-

rent CFA results on diverse samples provides strong evidence of construct validity. Additional research is needed to examine further the criterion-related validity of the ECST-R competency scales in light of independent experts' judgments. Beyond the ECST-R competency scales, research (see, e.g., Rogers, Sewell, Grandjean, & Vitacco, 2002; Rogers et al., 2003) is also under way to investigate the usefulness of the ECST-R Atypical scale as a screen for feigned incompetency.

NOTES

1. Technically, the MacArthur Competency Assessment Tool-Criminal Adjudication (MacCAT-CA) scales are referred to as *measures*; however, the authors report scale properties, such as alpha coefficients, interitem correlations, and cut scores.

2. The two-factor model was aligned almost perfectly (20 of 21 significant loadings) with two basic types of questions (i.e., hypothetical vs. case specific).

REFERENCES

- Abrams, A. A. (2002). Assessing competency in criminal proceedings. In B. Van Dorsten (Ed.), *Forensic psychology from classroom to courtroom* (pp. 105-141). New York: Kluwer Academic.
- American Bar Association. (1989). *ABA criminal justice mental health standards* (Part IV). Washington, DC: Author.
- Bagby, R. M., Nicholson, R. A., Rogers, R., & Nussbaum, D. (1992). Domains of competency to stand trial. *Law and Human Behavior, 16*, 491-507.
- Bentler, P. M. (1995). *EQS structural equations program manual*. Encino, CA: Multivariate Software.
- Bonnie, R. J. (1992). The competence of criminal defendants: A theoretical reformulation. *Behavioral Sciences and the Law, 10*, 291-316.
- Bonnie, R. J. (1993). The competence of criminal defendants: Beyond *Dusky* and *Drope*. *Miami Law Review, 47*, 539-601.
- Bonnie, R. J., & Grisso, T. (2000). Adjudicative competence and youthful offenders. In T. Grisso & R. G. Schwartz (Eds.), *Youth on trial: A developmental perspective on juvenile justice* (pp. 73-103). Chicago: University of Chicago Press.
- Bonnie, R. J., Hoge, S. K., Monahan, J., Poythress, N., Eisenberg, M., & Feucht-Haviar, T. (1997). The MacArthur adjudicative competence study: A comparison of criteria for assessing the competence of criminal defendants. *Journal of the American Academy of Psychiatry and Law, 25*, 249-259.
- Borum, R., & Grisso, T. (1995). Psychological test use in criminal forensic evaluations. *Professional Psychology: Research and Practice, 26*, 465-473.
- Clark, L. A., & Watson, D. (1995). Constructing validity: Basic issues in objective scale development. *Psychological Assessment, 7*, 309-319.
- Cooper v. Oklahoma, 116 S. Ct. 1373 (1996).
- Drope v. Missouri, 420 U.S. 162 (1975).
- Dunn, G., Everitt, B., & Pickles, A. (1993). *Modeling covariances and latent variables using EQS*. London: Chapman and Hall.
- Dusky* v. United States, 362 U.S. 402 (1960).
- Godinez v. Moran, 113 S.Ct. 2680 (1993).
- Grisso, T. (2003). *Evaluating competencies: Forensic assessments and instruments* (2nd ed.). New York: Kluwer Academic.
- Hu, L., & Bentler, P. M. (1998). Fit indices in covariance structure modeling: Sensitivity to underparameterized model misspecification. *Psychological Methods, 3*, 424-453.

- Hu, L., & Bentler, P. M. (1999). Cutoff criteria for fit indexes in covariance structure analysis: Conventional criteria versus new alternatives. *Structural Equation Modeling, 6*, 1-55.
- Laboratory of Community Psychiatry, Harvard Medical School. (1973). *Competency to stand trial and mental illness* (DHEW Publication No. ADM-77-103). Rockville, MD: Department of Health, Education, and Welfare.
- Lipsitt, P., Lelos, D., & McGarry, A. (1971). Competency for trial: A screening instrument. *American Journal of Psychiatry, 128*, 105-109.
- McGarry, A. L. (1973). *Competency to stand trial and mental illness*. Washington, DC: National Institute of Mental Health.
- Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (1997). *Psychological evaluations for the courts* (2nd ed.). New York: Guilford.
- Miller, H. A. (2001). *Miller Forensic Assessment of Symptoms Test (M-FAST)*. Odessa, FL: Psychological Assessment Resources.
- Miller, R. D. (2003). Criminal competence. In R. Rosner (Ed.), *Principles and practice of forensic psychiatry* (2nd ed., pp. 186-212). London: Arnold.
- Otto, R. K., Poythress, N. G., Nicholson, R. A., Edens, J. F., Monahan, J., Bonnie, R. J., et al. (1998). Psychometric properties of the MacArthur Competence Assessment Tool—Criminal Adjudication. *Psychological Assessment, 10*, 435-443.
- Pate v. Robinson, 383 U.S. 375 (1966).
- Poythress, N. G., Nicholson, R., Otto, R. K., Edens, J. F., Bonnie, R. J., Monahan, J., et al. (1999). *Professional manual for the MacArthur Competence Assessment Tool—Criminal Adjudication*. Odessa, FL: Psychological Assessment Resources.
- Riggins v. Nevada, 504 U.S. 127 (1992).
- Robey, A. (1965). Criteria for competency to stand trial: A checklist for psychiatrists. *American Journal of Psychiatry, 122*, 616-623.
- Rogers, R. (2001). Focused forensic interviews. In R. Rogers (Ed.), *Handbook of diagnostic and structured interviewing* (pp. 296-337). New York: Guilford.
- Rogers, R., Bagby, R. M., & Dickens, S. E. (1992). *Structured Interview of Reported Symptoms (SIRS) and professional manual*. Odessa, FL: Psychological Assessment Resources.
- Rogers, R., & Grandjean, N. R. (2000, March). *Competency measures and the Dusky standard: A conceptual mismatch?* Biennial convention of the American Psychology-Law Society, New Orleans, LA.
- Rogers, R., Grandjean, N. R., Tillbrook, C. E., Vitacco, M. J., & Sewell, K. W. (2001). Recent interview-based measures of competency to stand trial: A critical review augmented with research data. *Behavioral Sciences and the Law, 19*, 503-518.
- Rogers, R., Jackson, R. L., Sewell, K. W., & Harrison, K. S. (2003). *An examination of the ECST-R as a screen for feigned incompetency to stand trial*. Manuscript submitted for publication.
- Rogers, R., Sewell, K. W., Grandjean, N. R., & Vitacco, M. J. (2002). The detection of feigned mental disorders on specific competency measures. *Psychological Assessment, 14*, 177-183.
- Rogers, R., Tillbrook, C. E., & Sewell, K. W. (1998). Evaluation of Competency to Stand Trial—Revised (ECST-R). Unpublished test, University of North Texas, Denton.
- Rogers, R., Ustad, K. L., Sewell, K. W., & Reinhart, V. (1996). Dimensions of incompetency: A factor analytic study of the Georgia Court Competency Test. *Behavioral Sciences and the Law, 14*, 323-330.
- Shuman, D. W. (1996). *Psychiatric and psychological evidence* (2nd ed.). Colorado Springs, CO: Shepherds/McGraw-Hill.
- Skeem, J. L., Golding, S. L., Cohn, N. B., & Berge, G. (1998). Logic and reliability of evaluations of competence to stand trial. *Law and Human Behavior, 22*, 519-547.
- Spitzer, R. L., & Endicott, J. (1978). *Schedule of Affective Disorders and Schizophrenia—Change version*. New York: Biometrics Research.
- Tillbrook, C. E. (2000). *Competency to proceed: A comparative appraisal of approaches to assessment*. Unpublished doctoral dissertation, University of Alabama, Tuscaloosa.
- Ustad, K. L., Rogers, R., Sewell, K. W., & Guarnaccia, C. A. (1996). Restoration of competency to stand trial: Assessment with the GCCT-MSH and the CST. *Law and Human Behavior, 20*, 131-146.
- Wildman, R., Batchelor, E., Thompson, L., Nelson, F., Moore, J., Patterson, et al. (1980). *The Georgia Court Competency Test: An attempt to develop a rapid, quantitative measure for fitness to stand trial*. Unpublished manuscript, Forensic Services Division, Central State Hospital, Milledgeville, GA.

Richard Rogers, Ph.D., ABPP is a professor of psychology at the University of North Texas. His recent books (www.guilford.com) include *Clinical Assessment of Malingering and Deception*, *Conducting Insanity Evaluations*, and *Diagnostic and Structured Interviewing*. His published psychological measures (www.parinc.com) include the *Structured Interview of Reported Symptoms (SIRS)* and the forthcoming *Evaluation of Competency to Stand Trial-Revised (ECST-R)*.

Rebecca L. Jackson, M.S., successfully defended her dissertation at the University of North Texas and is completing her internship. Her publications include research on forensic evaluations and psychopathy.

Kenneth W. Sewell, Ph.D., is a professor of psychology and director of clinical training at the University of North Texas. His varied research interests include PTSD, clinical assessment, and collaborative forensic research with Dr. Rogers. He is an author of the *ECST-R*.

Chad E. Tillbrook, Ph.D., is an assistant professor of psychiatry at the University of Massachusetts Medical School where he specializes in forensic research and practice. A primary research interest is competency to stand trial. He is also an author of the *ECST-R*.

Mary A. Martin, M.S., is an advanced doctoral student at the University of North Texas. Her publications include research on the MMPI-2 and malingering, and adolescent psychopathy.