

FILED

MAY 22 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed May 22, 1984

vs.

)

JAMES PATRICK BAKER, a/k/a

)

ROBERT LEE BAKER, JR.,

)

4-87
83-263

Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County - Margaret S. Briles,
Judge.

Defendant appeals from his conviction for the false use of a financial instrument, a violation of Iowa Code section 715.6, asserting: (1) that he was denied due process due to failure to provide a formal competency hearing pursuant to Iowa Code section 812.3; (2) that there was sufficient foundation to permit defendant's expert witness to testify with regard to his defense of diminished capacity; and (3) that various acts and omissions of trial counsel denied him effective assistance and that his claim should be preserved for postconviction proceedings.

AFFIRMED.

Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Roxann M. Ryan, Assistant
Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., and Snell and Sackett, JJ.

Defendant James Patrick Baker appeals from his conviction for the false use of a financial instrument in violation of Iowa Code section 715.6, asserting: (1) that he was denied due process due to failure to provide a formal competency hearing pursuant to Iowa Code section 812.3; (2) that there was sufficient foundation to permit defendant's expert witness to testify with regard to his defense of diminished capacity; and (3) that various acts and omissions of trial counsel denied him effective assistance and that his claim should be preserved for postconviction proceedings. The State asserts inter alia that the present record is insufficient to demonstrate ineffective assistance of trial counsel and that the issue would best be resolved in postconviction proceedings.

Our scope of review of criminal proceedings is on assigned error. Iowa R. App. P. 4 (1983). When an issue involves a violation of a basic constitutional safeguard, we make our own evaluation of the claim under the totality of the evidence from which the assertions of unconstitutionality arise and we review the evidence de novo. State v. Lemburg, 257 N.W.2d 39, 46 (Iowa 1977); State v. Snethen, 245 N.W.2d 308, 311 (Iowa 1976).

Following jury trial defendant was convicted of false use of a financial instrument upon evidence that he cashed two forged checks on January 9, 1979. Pursuant to a pretrial court order, a doctor examined defendant for about one hour on August 17, 1982, and reported that it appeared that defendant's thinking was fragmented and schizoid and that he would be unable to cooperate meaningfully with his lawyer in his defense. Based upon that report, the court ordered further evaluation at the Oakdale medical facility. After more extensive testing a different doctor reported that defendant had displayed no signs of psychosis and that the State's opinion that he was fully competent was "maybe correct." No further competency hearing was sought or provided.

Defendant contends that, by failing to order a competency hearing under

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Iowa Code section 812.3 (1981), the trial court abused its discretion and violated defendant's right to due process of law. Section 812.3 states:

If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder which prevents him or her from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, further proceedings must be suspended and a hearing had upon that question.

Then, "If, upon hearing conducted by the court, the accused is found to be incapacitated in the manner described in section 812.3, no further proceedings shall be taken under the complaint or indictment until the accused's capacity is restored. . . ." Iowa Code section 812.4 (1981).

The defendant has the initial burden of proving his insanity. State v. Snethen, 245 N.W.2d at 310. If he does prove his insanity, "such condition is presumed to continue, but if a discharge of the patient from confinement follows later, the presumption changes and there is a new presumption that sanity has returned." Foy v. Metropolitan Life Insurance Co., 220 Iowa 628, 632, 263 N.W. 14, 15, 16 (1935). See also State v. Snethen, 245 N.W.2d at 310-11; Hoskins v. Bennett, 256 Iowa 1370, 1373-74, 131 N.W.2d 510, 513 (1964).

In the instant case, defendant's trial was suspended on a doctor's report that defendant could not effectively assist in his defense. The court ordered defendant's examination at Oakdale. After extensive examinations at Oakdale, he was determined to be mentally competent. At that point, any presumption of continuing insanity ended and a presumption of sanity returned. See State v. Snethen, 245 N.W.2d at 311. Contrary to what defendant argues, it was not necessary to hold a second competency hearing to determine defendant's competency. It was again defendant's burden to prove mental incompetency to stand trial. Unless the evidence "would lead a reasonable person to believe a substantial question of defendant's competency exists," State v. Aswegan, 331 N.W.2d 93, 96 (Iowa 1983), see also State v. Kempf, 282 N.W.2d 704, 706 (Iowa

1979), the trial court did not abuse its discretion by failing to order a competency hearing.

At trial defendant relied solely on a defense of diminished capacity and sought to present testimony of the first examining doctor to the effect that the symptoms he noted in his examination could have been present at the time the crime was committed. The court sustained the State's foundational objection to admission of the testimony when, during voir dire questioning, the doctor stated that his opinion was based on a diagnostic impression that would have to be validated by further study.

Defendant contends the trial court abused its discretion by refusing to allow the first doctor's testimony. Although "Iowa is committed to a liberal rule that allows opinion testimony if it will aid the jury and is based on special training, experience, or knowledge with respect to the issue in question," State v. Dvorsky, 322 N.W.2d 62, 63 (Iowa 1982), it is also true that "the receipt of opinion evidence . . . rests largely in the trial court's discretion and we are loathe to interfere with the exercise thereof unless it has been manifestly abused to the prejudice of the complaining party." State v. Mayhew, 170 N.W.2d 608, 619 (Iowa 1969).

Expert testimony is not admissible unless the witness is shown to be qualified and the facts upon which he bases his opinion are sufficient to enable a witness so qualified to express an opinion which is more than a mere conjecture.

Ganrud v. Smith, 206 N.W.2d 311, 314 (Iowa 1973).

In the case at bar, the testimony which the court excluded would have been based on the first doctor's one-hour examination of defendant. The doctor admitted that his opinion was just a "diagnostic impression, which would have to be validated by further study," and "was not a valid medical certainty."

We find the trial court did not abuse its discretion in excluding the doctor's expert testimony because the facts upon which he would have based his opinion

were insufficient to enable the doctor to express an opinion which would have been more than a mere conjecture See Ganrud v. Smith, 206 N.W.2d at 314. Further, without the testimony of that expert witness, defendant was unable to sustain his burden of proving his mental incompetency to stand trial. Therefore, the trial court did not abuse its discretion in failing to order a competency hearing.

We agree with both parties that defendant's claim of ineffective assistance of counsel is inadequately documented at this time. Therefore we decline to decide the issue.

AFFIRMED