

FILED

OCT 18 1979

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IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed October 18, 1979

vs.

)

TONY ROS BAKER,

)

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62737

Defendant-appellant.

)

Appeal from Black Hawk District Court - Dennis D. Damsgaard, Judge.

Defendant appeals conviction alleging trial court erred in denying his motions in arrest of judgment and for new trial where it reasonably appeared defendant was incompetent to stand trial as defined in section 812.3, Supplement to the Code 1977.
AFFIRMED.

Michael E. Sheehy, Public Defender, Waterloo, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Lona Hansen, Assistant Attorney General; and David H. Correll, Black Hawk County Attorney; for defendant-appellant.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant-appellant, Tony Ros Baker, appeals jury verdict finding him guilty of burglary in the second degree in violation of section 713.3, Supplement to the Code 1977. He asserts trial court erred in denying his motions in arrest of judgment and for new trial. We affirm.

On July 12, 1978, defendant entered his plea of not guilty to the charge in Black Hawk County District Court. Trial was held September 12-14, 1978.¹ At sentencing, defendant presented medical testimony to support his motions in arrest of judgment and for new trial alleging he was mentally incompetent to stand trial as defined in section 812.3, Supplement to the Code 1977. Section 812.3 requires "[i]f 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." This statute mandates "a hearing on the issue of competency when the record contains information from which a reasonable person would believe a substantial question of the defendant's competency exists. The question is a legal one. Trial court discretion is not involved." State v. Kempf, No. 63388, slip op. at 4 (Iowa, Aug. 29, 1979). Based on this testimony, defendant contends he did not possess sufficient mental capacity at trial to appreciate the charge against him, understand the proceedings, or aid in his defense.

When defendant's competency during trial court proceedings is challenged on appeal, review of the information before trial court is necessary to determine "if at the relevant time an unresolved question of defendant's competency reasonably appeared." Id. Because constitutional safeguards are implicated, we make an independent review of the totality of the circumstances. Id.; State v. Iverson, 272 N.W.2d 1, 4 (Iowa 1978); Bettuo v. Pelton, 260 N.W.2d 423, 425 (Iowa 1977); State v. Thomas, 205 N.W.2d 717, 721 (Iowa 1973). Defendant's witness, Dr. Singer, testified he had conducted a 15 minute examination of defendant at a hospital emergency room in the middle of the afternoon or towards evening on September 14, 1978, and was of the opinion defendant was going through an acute drug withdrawal reaction, secondary to narcotic withdrawal. He observed the defendant's pupils were small but they reacted. Defendant was

¹ Attendant circumstances to the alleged offense are not material to defendant's appeal.

continuously shaking and seemed unable to stop even though he tried to do so.²⁹ Defendant's abdomen was rigid and tender. When asked if he had an opinion as to whether or not a person in such a condition could have participated effectively and appreciate the nature of a trial proceeding in the period 8 to 12 hours previous to the medical examination replied: "I feel Mr. Baker, when I saw him, was in certainly a state where he could not logically answer questions or defend himself so I think in the preceeding eight to twelve hours he probably could not have done so either."²

Except for the testimony of Dr. Singer, the record discloses no other evidence of defendant's alleged incompetency. On cross-examination Dr. Singer stated there are causes of pupil dilation other than drug withdrawal. He also testified the shaking could have been "posed" and the tender abdomen "faked." Entry notes of the nurse on emergency room duty at the time of defendant's admission referred to defendant as "cooperative and alert." Dr. Singer further stated his diagnosis was based essentially on the dilated pupils, shaking, tender abdomen and defendant's own statements. No objections were made by defendant either before or during the course of trial alleging mental incompetence. Trial court noted no testimony or evidence at trial that defendant was under the influence of narcotics during the course of trial, nor did defendant appear visibly impaired from a layman's standpoint. Defendant was able to take notes and follow testimony presented. The trial judge stated he had observed defendant closely after defendant had been examined by a doctor on September 13, 1978.³

Trial court was not required to accept Dr. Singer's expert opinion. Such evidence "... may be accepted in whole, in part, or not at all. ... [citing authority.]" State v. Gilmore, 259 N.W.2d 846, 860 (Iowa 1977), quoting State v. Schultz, 231 N.W.2d 585, 587 (Iowa 1975). We find the record establishes that at no stage of the proceedings did it reasonably appear defendant was mentally incompetent to stand trial due to his inability to appreciate the charge against him, understand the proceedings, or aid counsel in his defense.

Judgment of trial court is affirmed.

AFFIRMED.

² App. p. 11.

³ The examination was performed as a result of defendant's allegations he had been beaten in the jail and was unable to proceed with trial. The examination revealed no objective signs defendant had been beaten or had any injuries.