FILED
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CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 0-551 / 89-1515

**STATE OF IOWA,**

Appellee,

410

vs.

**RAYMOND DEWAYNE RATCLIFF,**

Appellant.

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Appeal from the Iowa District Court for Linn County, L. Vern Robinson and Lynne E. Brady, Judges.

The defendant appeals his conviction, following a jury trial, for sexual abuse in the third degree. **AFFIRMED.**

Linda Del Gallo, Acting State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Denver D. Dillard, County Attorney, Jerry Vandersanden and Harold Denton, Assistant County Attorneys, for appellee.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

**SCHLEGEL, P.J.**

Defendant, Raymond Ratcliff, appeals his conviction, after a jury trial, of sexual abuse in the third degree. He contends the trial court erred in failing to suspend proceedings pursuant to Iowa Code section 812.3. We affirm.

Defendant's son reported in February 1989 that he had been sexually abused by defendant. The twelve-year-old testified he had been required to exchange oral sex acts with his father. Defendant was arrested and charged by information with sexual abuse in the third degree. See Iowa Code § 709.4(3) (1987).

Defendant moved to suspend proceedings and to order medical evaluation of himself to determine his competency to stand trial. Iowa Code 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 the defendant 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.

After a hearing to determine the necessity of suspending proceedings and of ordering a psychological evaluation, the trial court found "that the Defendant is competent; that he is not suffering from a mental disorder which prevents him from appreciating the charge, understanding the proceedings or assisting effectively in his defense."

The Iowa Supreme Court has discussed section 812.3 and our role in State v. Kempf, 282 N.W.2d 704, 706-07 (Iowa 1979):

> [Section 812.3] requires 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.
>
> When the defendant's competency during trial court proceedings is challenged on appeal, our task is to examine the information before the trial court to determine if at the relevant time an unresolved question of the defendant's competency reasonably appeared. Because constitutional safeguards are implicated, we make our own evaluation of the totality of the circumstances. State v. Thomas, 205 N.W.2d 717, 721 (Iowa 1973). This means we review the record de novo. Bettuo v. Pelton, 260 N.W.2d 423, 425 (Iowa 1977).

Defendant argues on appeal that because a substantial question existed concerning his competency, the trial court erred in failing to order a psychological examination and in failing to allow the defendant to prepare for a competency hearing. Defendant contends the trial court's error lies in applying an incorrect standard in ruling on defendant's motion to determine competency. We turn now to the facts.

At the hearing defendant presented the testimony of his family physician, who stated that defendant suffers from an anxiety disorder with elements of depression. The doctor indicated the disorder manifests itself in stressful circumstances and would cause defendant to lose mental

alertness and cognitive skills. Defense counsel noted defendant's lack of cooperation.

The record also showed that the anxiety disorder could and was being treated with medication. Although defendant had been hospitalized several times for problems probably psychologically induced, he had never been diagnosed as suffering neurosis or psychosis and had never been committed. Defendant's family physician admitted that it appeared defendant knew of the sexual abuse charges against him, that there would be a court proceeding, and that if he was found guilty, he could be incarcerated.

The threshold questions seem to be whether the trial court conducted an appropriate proceeding, applied a proper standard, and permitted adequate preparation and evidence. We conclude that it did. We think all involved, including the trial court, appreciated the significance of the hearing for determining whether a "substantial question" of competency existed as demonstrated by the following exchange at the hearing:

> THE COURT: So your understanding was you have raised the issue but the judge [who granted the hearing] was not satisfied simply from your application about whether a psychiatrist should be appointed?
>
> [DEFENSE COUNSEL:] . . . [U]nder 812.3 it would appear that if there's sufficient basis for the Motion, . . . the State's proceeding shall cease and the examination be held; and [judge who granted the hearing] felt that my say-so was not enough to support the application at that time[;] . . . in other words, my understanding is we're here to see if there's sufficient basis to halt

> the proceedings under 812.3 and order an examination.
>
> [PROSECUTION:] That is the first step; correct.
>
> THE COURT: All right. . . .

The supreme court recently reiterated the relevant factors the trial court must use in determining whether a section 812.3 hearing should be held. Those factors include:

> (1) presence of irrational behavior, (2) other demeanor during trial which suggests a competency problem, (3) medical evidence of which the trial court is aware concerning defendant's mental competency.

State v. Myers, 460 N.W.2d 458, 460 (Iowa 1990) (citing State v. Lucas, 323 N.W.2d 228, 232-33 (Iowa 1982)).

Based on the foregoing Lucas-Myers factors, our de novo review of the record reveals no "information from which a reasonable person would believe a substantial question of the defendant's competency exists." Kempf, 282 N.W.2d at 706. In fact, it appears quite clear from the record that defendant did not exhibit irrational behavior or other demeanor suggestive of a competency problem, understood his problems and the significance of the proceedings, and could assist in his own defense. We see nothing to show that the trial court applied an incorrect standard. We hold the trial court did not err in refusing to suspend the proceedings and, therefore, affirm defendant's conviction of third degree sexual assault.

**AFFIRMED.**