

IN THE COURT OF APPEALS OF IOWA

No. 9-155 / 97-2351

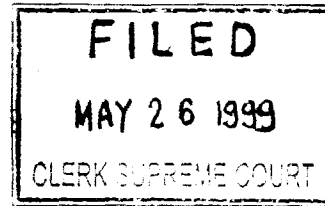
STATE OF IOWA,

Appellee,

vs.

DONALD LEE BURTON,

Appellant.



Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, and Arthur E. Gamble, Judges.

Defendant appeals following his convictions for first-degree murder in violation of Iowa Code sections 707.1, 707.2(1), and 707.2(2) (1997), and second-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(2) (1997).

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, John P. Sarcone, County Attorney, and Odell McGhee, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Zimmer, JJ. Sackett, C.J., takes no part.

ZIMMER, J.

Donald Lee Burton appeals his convictions for first-degree murder in violation of Iowa Code sections 707.1, 707.2(1), and 707.2(2) (1997), and second-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(2) (1997). We affirm.

On July 2, 1997, Burton was charged by trial information with first-degree murder and second-degree theft. On August 20, 1997, he filed a notice of defense of insanity and diminished responsibility. *See* Iowa R. Crim. P. 10(11)(b)(1). At a pre-trial conference on August 26, 1997, defense counsel requested a hearing on Burton's competency to stand trial. A pre-trial competency hearing was subsequently held pursuant to Iowa Code section 812.3. On November 11, 1997, the district court found Burton competent to stand trial. The issue of Burton's competency to stand trial was revisited three times during trial upon request of defense counsel. Each time the court reaffirmed the pre-trial ruling.

Trial commenced on November 17, 1997. At trial, Burton did not contest evidence presented by the State which established he killed Laura Carson at her home on or about April 4, 1997, and stole her car. Ms. Carson died as a result of multiple stab wounds. Burton presented an insanity defense. He was convicted of both charges by jury verdicts on November 26, 1997. He now appeals claiming the district court erred in finding him competent to stand trial. He also claims the district court erred in failing to grant a mistrial after the issue of juror prejudice was raised.

I. Burton's Competency to Stand Trial.

A. Scope of Review. Our scope of review is for correction of errors at law. See Iowa R. App. P. 4; *State v. Rieflin*, 558 N.W.2d 149, 151 (Iowa 1996). We are bound by the district court's findings of fact if they are supported by substantial evidence. See Iowa R. App. P. 14(f)(3); *State v. Rieflin*, 558 N.W.2d at 151.

Burton contends our review is de novo. See *State v. Rieflin*, 558 N.W.2d at 152 (review is de novo where no competency hearing is held below because the district court determined none was necessary). However, we do not review the evidence de novo where a determination of competency has been made by the district court. See *State v. Aswegan*, 331 N.W.2d 93, 95 (Iowa 1983); *State v. Jackson*, 305 N.W.2d 420, 425 (Iowa 1981). The record shows the district court made a pre-trial determination of competency and revisited the issue several times during trial. Therefore, our inquiry is not de novo, but rather is limited to whether the record supports the competency findings. See *State v. Rieflin*, 558 N.W.2d at 152.

B. Merits. Burton argues the trial court erred in determining he was competent to stand trial. We disagree.

A defendant is presumed competent to stand trial; he or she has the burden of proving his or her incompetence by a preponderance of the evidence. See *State v. Rieflin*, 558 N.W.2d at 152 (citing *Cooper v. Oklahoma*, 517 U.S. 348, 355, 116 S. Ct. 1373, 1377, 134 L. Ed. 2d 498, 506 (1996)). If the record contains information from which a reasonable person would believe a substantial question of defendant's competency exists, Iowa Code section 812.3 requires a competency hearing be held.

Id. Whether a hearing should be held is determined by considering (1) whether defendant's behavior is irrational; (2) whether defendant exhibits any demeanor at trial that suggests a competency problem; and (3) any prior medical opinions regarding the defendant's competency to stand trial. *Id.* The district court must ultimately decide whether the defendant has a present ability to (1) appreciate the charge against him or her; (2) understand the proceedings; and (3) assist effectively in his or her defense. *See* Iowa Code § 812.3 (1997); *State v. Rieflin*, 558 N.W.2d at 152–53; *see also Cooper v. Oklahoma*, 517 U.S. at 368, 116 S. Ct. at 1384, 134 L. Ed. 2d at 515 (defendant's competency to stand trial is based on his present ability to understand the charges against him or her and to communicate effectively with defense counsel).

The district court received testimony from a state psychiatrist who testified defendant was competent to stand trial because he was capable of understanding the charges against him, capable of understanding the proceedings, and capable of assisting his attorneys in his defense. Testimony was also received from a defense psychiatrist who concluded defendant understood the nature of the charges he faced and the mechanical aspects of the criminal trial. He did conclude, however, that defendant was only minimally capable of assisting in his defense because of his inability to reason abstractly. The defense also produced a psychologist who testified defendant suffered from hallucinations or delusional thoughts. In his opinion, defendant could neither understand the nature of the charges nor the proceedings and was incapable of assisting his attorneys in his defense.

The district court carefully weighed the expert medical opinions of the witnesses. It concluded defendant failed to establish by a preponderance of the evidence that he was not competent to stand trial. The court reached its conclusion after recognizing inconsistencies in the opinions of the defendant's own expert witnesses actually supported the conclusions reached by the State's expert witness. We determine substantial evidence supports the district court's pre-trial ruling that Burton was competent to stand trial. We cannot say the district court's finding was error as a matter of law.

For these same reasons, we agree with the district court that defendant remained competent throughout trial. The issue of competency was raised on at least three separate occasions during trial. On each occasion, the trial court appropriately considered the issue before reaffirming the prior competency ruling. We find no error in the court's handling of this matter. Each time the issue was raised, the court was provided little new evidence demonstrating a competency matter at odds with the pre-trial ruling. *See State v. Jackson*, 305 N.W.2d at 425 (holding that "after an adjudication of competency, new or additional evidence must be produced by defendant to overcome the presumption of competency the law imposes"). Defense counsel complained Burton was not helping in his own defense. However, on the record it appears to us Burton simply chose not to assist his attorneys. Deciding not to assist defense counsel is, of course, far different than being incapable of assisting defense counsel.

A pre-trial determination of competency creates a presumption of continued competency until contrary evidence is produced. *See State v. Rieflin*, 558 N.W.2d at 152; *State v. Jackson*, 305 N.W.2d at 426. We determine the trial court did not commit legal error in determining Burton remained competent to stand trial throughout the proceedings.

II. Motion for Mistrial

A. Scope of Review. A trial court has broad discretion when ruling on a motion for mistrial. *See State v. Wade*, 467 N.W.2d 283, 285 (Iowa 1991). Because defendant has not argued a violation of constitutional rights, we will reverse the trial court's denial of a mistrial only if there has been an abuse of discretion. *See State v. Veal*, 564 N.W.2d 797, 809–10 (Iowa 1997); *State v. Keys*, 535 N.W.2d 783, 786 (Iowa App. 1995). We will find an abuse of discretion only if defendant establishes the trial court's denial of his mistrial motion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *See State v. Heck*, 301 N.W.2d 741, 742 (Iowa 1981); *State v. Trudo*, 253 N.W.2d 101, 106 (Iowa 1977). Defendant must show there is no support in the record for the trial court's ruling, and prejudice prevented him from receiving a fair trial. *See State v. Waters*, 515 N.W.2d 562, 567 (Iowa App. 1994); *State v. Callender*, 444 N.W.2d 768, 770 (Iowa App. 1989) (citing *State v. Trudo*, 253 N.W.2d at 106).

B. Merits. Burton argues the trial court abused its discretion in overruling several motions for mistrial made upon alleged juror prejudice. We disagree.

After jury deliberations began, one of the jurors sent a signed note to the trial judge expressing a desire to speak with him "about prejudice in the jury room." The note said nothing of the type of prejudice, which of the jurors bore the prejudice, or to whom the alleged prejudice was directed. The juror who sent the note is an African-American. Burton is also an African-American. Upon being informed by the court that the communication had been received, Burton moved for a mistrial.

After discussion with the prosecutor and defense counsel, the court denied Burton's motion, opting instead to provide a note to the jury reminding them of their role as jurors. It directed the jury to arrive at a verdict solely upon the evidence introduced at trial and the laws set forth in the jury instructions. It admonished the jury to not be influenced by personal likes or dislikes, sympathy, bias, prejudice, or emotions.

A second note was later received from the jury foreman claiming an unidentified juror had refused to cooperate, making it impossible for the jury to discuss all of the issues. The foreman claimed the jury was consequently at an impasse. The note did not identify the juror or indicate why the juror had refused to cooperate. Burton again requested a mistrial, which was denied. The court instead read a curative instruction to the jury which reiterated the court's prior communication regarding bias. The court also encouraged the jury to work together in reaching a final verdict.

Shortly thereafter, the court received a third note signed by the same juror who had signed the first note. He claimed he could not give a verdict because of the

prejudice of two other jurors. Burton again moved for a mistrial. After a discussion with defense counsel and the prosecutor, the court submitted a question to the jury foreman regarding the reasonable likelihood the jury would be able to reach a unanimous verdict. The jury foreman responded with the following written note: "We are currently working through the evidence and hope to come to a verdict when completed. Everyone is now working together."

Burton again moved for a mistrial. In response, the court suggested it would, if requested, poll the jury with three questions after the verdicts were announced. These questions would ask each juror (1) if they agreed with the verdict; (2) if the verdict was based solely upon the evidence introduced during trial and the law set forth in the instructions; and (3) if the verdict was a result of bias or prejudice for or against a party. It is clear from the record the trial court was prepared to grant a motion for mistrial if the responses to its questions indicated the verdict was tainted in any way. Defense counsel and the State rejected the court's offer to conduct an expanded polling procedure. The court subsequently agreed to poll the jury in the normal manner, if asked to do so by the defense or the State.

After the guilty verdicts were returned, defense counsel requested each juror be polled as to whether the announced jury verdicts were their own. The court polled the jurors, each of whom responded the verdicts were their own.

We determine the trial court handled a difficult situation in a reasonable manner. We are confident from our review of the record that the procedures followed by the court prevented potential problems regarding undisclosed claims of prejudice

and the temporary inability of all jurors to work together from affecting the verdicts eventually rendered.

The trial court gave the jury two corrective instructions. In the absence of evidence to the contrary, we assume the instructions were followed. *See State v. McMullin*, 421 N.W.2d 517, 520 (Iowa 1988). We find no evidence to the contrary here. Assisted by the court, the jury worked out any claimed potential problems and rendered unanimous verdicts on the evidence, which were confirmed by polling. Burton is unable to point to anything in the record that establishes prejudice of some sort contributed to the verdicts.

We conclude the trial court's response to the jury communications and its denial of the mistrial motions did not involve abuse of discretion.

AFFIRMED.

No. 97-2351. [9-155] STATE v. BURTON

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, and Arthur E. Gamble, Judges. **AFFIRMED.** Heard by Huitink, P.J., and Streit and Zimmer, JJ. Sackett, C.J., takes no part. Opinion by Zimmer, J. (9 pages \$3.60)

Burton appeals his convictions for first-degree murder and second-degree theft. **OPINION HOLDS: I. *Burton's Competency to Stand Trial.*** Burton argues the trial court erred in determining he was competent to stand trial. We disagree. The district court received testimony from a state psychiatrist, a defense psychiatrist, and a defense psychologist. The district court carefully weighed the expert medical opinions of the

witnesses. It concluded defendant failed to establish by a preponderance of the evidence that he was not competent to stand trial. The court reached its conclusion after recognizing inconsistencies in the opinions of the defendant's own expert witnesses actually supported the conclusions reached by the State's expert witness. We determine substantial evidence supports the district court's pre-trial ruling that Burton was competent to stand trial. The issue of competency was again raised on at least three separate occasions during trial. Each time the issue was raised, the court was provided little new evidence demonstrating a competency matter at odds with the pre-trial ruling. A pre-trial determination of competency creates a presumption of continued competency until contrary evidence is produced. *See State v. Rieflin*, 558 N.W.2d 149, 152 (Iowa 1996); *State v. Jackson*, 305 N.W.2d 420, 426 (Iowa 1981). We determine the trial court did not commit legal error in determining Burton remained competent to stand trial throughout the proceedings. **II. *Motion for Mistrial.*** Burton argues the trial court abused its discretion in overruling several motions for mistrial made upon alleged juror prejudice. We disagree. We are confident from our review of the record that the procedures followed by the court prevented potential problems regarding undisclosed claims of prejudice and the temporary inability of all jurors to work together from affecting the verdicts eventually rendered. The trial court gave the jury two corrective instructions. In the absence of evidence to the contrary, we assume the instructions were followed. *See State v. McMullin*, 421 N.W.2d 517, 520 (Iowa 1988). We find no evidence to the contrary here. Assisted by the court, the jury worked out any claimed potential problems and rendered unanimous verdicts on the evidence, which were confirmed by polling. Burton is unable to point to anything in the record that establishes prejudice of some sort contributed to the verdicts. We determine the trial court handled a difficult situation in a reasonable manner.