

IN THE COURT OF APPEALS OF IOWA

No. 9-506 / 88-966

STATE OF IOWA,

Appellee,

vs.

YVETTE MARIE MYERS,

Appellant.

FILED

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CLERK SUPREME COURT

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Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge.

The defendant appeals a judgment and sentence entered
by the trial court following a nonjury trial finding her
guilty of second-degree murder. REVERSED.

William L. Wegman, State Public Defender, and Barbara
M. Anderson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General; Ann E. Brenden,
Assistant Attorney General; and Jon Hammond, Assistant
County Attorney, for appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.,
but considered en banc.

SCHLEGEL, J.

Defendant Yvette Marie Myers appeals her conviction and sentence, following a bench trial, for second-degree murder. Defendant contends the trial court erred in failing to sua sponte order a competency hearing prior to trial. We reverse.

In June of 1987, the defendant was living with her mother in Cedar Rapids, Iowa. At approximately 12:30 p.m. on June 15, 1987, the defendant had an argument with her mother, became angry, and hit her several times on her head with a ball peen hammer, causing her death.

Yvette Myers was charged by trial information with first-degree murder in connection with the death of her mother. Shortly after her arrest the trial court ordered Myers to be transferred from the Linn County jail to the Oakdale medical and classification facility for pretrial evaluation and treatment of her mental illness. Myers had a long history of mental illness diagnosed as paranoid schizophrenia, chronic and undifferentiated. Myers had also been under civil commitment since 1983 as being seriously mentally impaired.

In July 1987, Myers filed a motion for a competency hearing, and one month later filed notice that she intended to rely on the defenses of insanity and diminished capacity. Myers also filed motions for individual voir dire, and sequestration, in limine, and to suppress. Myers

additionally filed an application for a pretrial adjudication of law points and change of venue. However, in October 1987, Myers filed a withdrawal of all of her pending motions and applications, and signed a waiver of jury trial.

The case proceeded to trial before the court on October 15, 1987, and the trial judge, on October 27, 1987, found Myers guilty of second-degree murder. In November 1987, Myers wrote to the court requesting new counsel on the grounds that she had been incoherent and that her attorney had not assisted her at trial. The trial judge subsequently appointed new counsel.

In January 1988, Myers' new counsel filed a request for a competency hearing to determine whether Myers understood the consequences if a mistrial was granted and if she was competent to understand the posttrial proceedings. A competency hearing was held, and the court subsequently found Myers incompetent to appreciate the charges against her, to understand the proceedings, and to effectively assist in her defense. All further proceedings were suspended, and the defendant was committed to the Iowa Department of Human Services.

In May of that year, the defendant filed a pro se request to be returned to the Linn County Jail. In that same month, the trial court received a letter from a state psychiatrist, stating that Myers had regained her

competency with the recommendation that she be returned to the trial court. Myers filed a motion in arrest of judgment and for new trial, which the trial court denied. The trial court sentenced Myers to fifty years in prison. Myers has appealed.

Since defendant's constitutional due process rights are involved here, our review is de novo. See State v. Lucas, 323 N.W.2d 228, 233 (Iowa 1982). See also State v. Jackson, 305 N.W.2d 420, 425 (Iowa 1981) (Where no competency hearing is held at the trial level and the appellate court is examining the propriety of the trial court's determination that no hearing is necessary, the evidence is reviewed de novo. The evidence is not reviewed de novo where a determination of competency has been made by the trial court.). Iowa Code section 812.3 provides:

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.

Pursuant to this section, the trial court is required to order "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." State v. Kempf, 282 N.W.2d 704, 706 (Iowa 1979). Since this question is strictly legal in

nature, the trial court's discretion is not involved. Id. at 706-07.

Our task here 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." Id. at 707. Relevant factors we look to in ascertaining whether due process requires an inquiry as to competency include: (1) defendant's irrational behavior, (2) demeanor at trial, and (3) any prior medical opinions on defendant's competency to stand trial. See State v. Aswegan, 331 N.W.2d 93, 96 (Iowa 1983).

The criminal trial of a person found incompetent to stand trial deprives the person of due process of law. Drope v. Missouri, 420 U.S. 162, 172, 95 S. Ct. 896, 904, 43 L. Ed. 2d 103, 113 (1975). The critical question of a defendant's competency is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a potential as well as a factual understanding of the proceedings against him." State v. Lucas, 323 N.W.2d 228, 232-33 (Iowa 1982).

The court should consider the defendant's irrational behavior, her demeanor in court, and any prior medical opinions about her competency to stand trial to determine if due process requires an inquiry into her competency.

State v. Aswegan, 331 N.W.2d 93, 96 (Iowa 1983)³⁵⁵ The trial court's determination is a legal question and not a matter within the trial court's discretion. State v. Lyon, 293 N.W.2d 8, 9 (Iowa 1980).

The trial court had before it the deposition of Dr. Frederickson, whose testimony equivocates as to the condition of the defendant, and admits that her thinking is not under control. Toward the end of her stay at the facility where Dr. Frederickson is a staff psychiatrist, he testified that she seemed to be suffering more in the nature of the symptoms of active schizophrenia. This was shortly before she returned to court for the "trial".¹ The trial court had the testimony of Dr. Patricia Rooney-Rebeck, the witness for the defendant, who testified that on June 9, 1987, she was in an active state of the disease of schizophrenia. The court found as a fact, that the defendant had been committed for mental disease some forty times in the past eleven years, and that she was

1. It is apparent from the record that the proceedings referred to as a "trial" were, in fact, the implementation of a predetermined and agreed to procedure to avoid a bargained guilty plea. By agreement of the trial court and counsel for both the State and the defendant, the trial consisted of the introduction, and agreement of the truth of, the minutes of testimony attached to the trial information and the introduction of the deposition of Dr. Frederickson on behalf of the State; and the live testimony of Dr. Patricia Rooney-Rebeck on behalf of Myers. (That testimony was the sole testimony on the issue of Myers' mental condition at or near the time of the events leading to the charge of murder.)

constantly diagnosed as paranoid schizophrenic, chronic and undifferentiated. One needs look no further than the record of her disease, her request for a competency hearing, Dr. Frederickson's equivocation, and the uncertainty of Myers' understanding of the proceedings at the time of the withdrawal of the application for competency hearing and the waiver of jury trial, to conclude that there were serious questions concerning Myers' competency. In fact, the record indicates that there was serious doubt as to her understanding of the proceedings at the time of the withdrawal of the motions and the subsequent trial.² On the basis of the information that came to the attention of the court at the time of the trial, the court, on its own motion, should have ordered the competency hearing. Had the court done so, the defendant would have been more likely to be guaranteed her due process rights to a fair trial. We reverse the conviction, grant a new trial, and order that it be assured

2. Myers did not testify. The only questions directed to her concerned whether she agreed to the withdrawal of the various motions. The trial court satisfied itself that Myers voluntarily and knowingly assented to the withdrawal of the motions and the application for competency hearing by hearing Myers answer, "Yes", when she was asked if she signed the application to withdraw the motions. Other answers given by Myers in that short interrogation raised more questions concerning her competency than whether she understood what was occurring. Although the issue of her withdrawal of the motions, and the knowing, intelligent, voluntary waiver of her right to a jury trial are not before us, it is difficult to see how these proceedings satisfied Myers due process rights to a fair trial.

that the defendant is competent to stand trial before any such proceedings occur.

REVERSED.

Oxberger, C.J., Hayden and Sackett, JJ., concur; Habhab and Donielson, JJ., dissent.

HABHAB, J. (dissenting)

I respectfully, but strongly, dissent. This conviction should not be reversed. The trial judge, who was present and had the opportunity to observe and evaluate the entire proceedings, saw no reason to hold a competency hearing. I reach the same conclusion.

Our responsibility as an appellate court 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." State v. Kemp, 282 N.W.2d 704, 707 (Iowa 1979). The relevant factors we look to in ascertaining whether due process requires an inquiry as to competency include: (1) defendant's irrational behavior, (2) demeanor at trial, (3) any prior medical opinions on defendant's competency to stand trial. State v. Aswegan, 331 N.W.2d 93, 96 (Iowa 1983). The critical question of a defendant's competency is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a potential as well as a factual understanding of the proceedings against him." State v. Lucas, 323 N.W.2d 228, 232-33 (Iowa 1982).

Applying the Aswegan standards to the record before us, I conclude there was not a substantial question of defendant's competency at the time of her trial to mandate a competency hearing. First, the record is devoid of any irrational behavior on the part of defendant which would

have alerted the trial court to a potential problem with the defendant's competency at the time of trial. Second, the record fails to disclose anything in the defendant's demeanor which would have caused the trial court to question defendant's competency at the time of her trial.

Turning to the third standard of Aswegan, the majority makes reference to the deposition of Dr. Frederickson. Dr. Frederickson is a psychiatrist at the Iowa Medical & Classification Center. The defendant was examined by him. The murder of which the defendant is accused occurred on June 15, 1987. Dr. Frederickson's deposition was taken on September 9 and 15, 1987, some three months after the death of defendant's mother. Trial was held on October 15, 1987, some thirty days after the taking of his deposition. The dates are important for they establish the close proximity in time between the taking of his deposition and the trial date.

Dr. Frederickson first met the defendant for interviewing purposes on July 7. During the course of his deposition, which by agreement of all parties was made a part of the record of the trial, he was asked:

Q. Did you reach your opinion about her being competent to stand trial during that first interview you had with her on July 7th? A. I was of the opinion that she was competent at that time, yes.

Q. And did that opinion ever change? A. No.

The doctor further testified that he did not think the defendant had any thinking disorder. He did testify toward

the end of her hospital stay that there were times when she would say things that were a little unusual. When asked specifically what unusual things she may have said, he answered:

A. I'm not sure I can remember exactly what she said, but it made me wonder if there might not be a little or some looseness in the associations in her thinking. But my final impression after reviewing everything was that she probably was malingering and trying to look crazy.

Pursuing the malingering problem a little further, the prosecuting attorney asked the doctor whether during the time that the defendant spent at Oakdale between July 7 and August 21 he came to believe that she was simply feigning mental infirmity. In response to this question, the doctor answered: "A. I thought so. Q. You haven't changed your mind about that, have you? A. No."

The record is clear that Dr. Frederickson took into consideration the fact that the defendant may be schizophrenic. Nonetheless, Dr. Frederickson did not think that the defendant had a thinking disorder. Dr. Frederickson was asked:

Q. Are you telling me then, Dr. Frederickson, that whatever thinking disorder she may have isn't such that it would interfere with her ability to understand the proceedings? A. That's correct.

* * *

Q. During the time that Miss Myers was at Oakdale, did you ever see anything at all that would make you think that she had a thinking disorder that would interfere with her understanding of the proceedings? A. No.

Q. And that includes that last part of her time there when you did see some looseness in association? A. Yes.

Q. Will you describe for me, please Doctor, what you understand as required in order for a person accused of crime to be able to understand the proceedings against them? . . . A. Well, that they're capable of understanding what they're charged with, capable of understanding court proceedings, and capable of assisting in their defense with their attorney.

Q. Is it your opinion that Yvette Myers is capable of understanding a trial in a courtroom during which she is being prosecuted for murder in the first degree? A. Yes.

Q. And do you hold that opinion to a reasonable degree of medical certainty? A. Yes.

Q. And is that also your opinion about her ability to participate or effectively assist in her defense? A. Yes.

Q. Is there anything at all that gives you any reservation about her ability to understand the courtroom proceedings or to assist in her defense? A. No.

Q. Is it your opinion that she would be able to sit through a day of trial and pay attention to what was happening in the courtroom? A. I think she's capable of it.

Q. Do you have any reservations about that? A. Not really. I would just point out that I am not so sure she's the most cooperative.

Q. But it's your opinion that her lack of cooperation is a deliberate ruse? A. Yes.

It is true that the defendant presented a history of mental illness. However, it is well established that the mere presence of a mental illness does not equate to incompetency. Hickey v. District Court of Kossuth County, 174 N.W.2d 406, 410 (Iowa 1970).

When I review Dr. Frederickson's deposition, I reach the conclusion that it does not reasonably appear that the defendant was suffering at the time of trial from a mental disorder which prevented her from appreciating the charge,

understanding the proceeding, or assisting effectively in her defense.¹

Finally, I note that two attorneys were appointed to represent the defendant. I consider it highly significant that defendant's trial counsel raised no question of defendant's competency to stand trial. Indeed, defendant's motion for a competency hearing was withdrawn. Such action on the part of defense counsel, who clearly is in an unrivaled position in which to gauge the competency of defendant, cannot be ignored. See Lucas, 323 N.W.2d at 233. Additionally, the majority allows, nay invites, any defendant in a criminal proceeding with a history of psychological or mental illness to sandbag the trial court by not presenting evidence on the issue of a current mental or psychological infirmity until that point when the defendant has received a verdict to his or her disliking. I find no error on the part of the trial court in not sua sponte ordering a competency hearing prior to trial.

Donielson, J., joins this dissent.

1. Although the trial judge did not have Dr. Michael Taylor's medical report at trial time, we note from the record that Dr. Taylor consulted with the defendant for evaluation and treatment, and stated in his letter of October 23, 1987, that although defendant suffered from schizophrenia, "it does not appear that her illness was sufficiently symptomatic at the time of the commission of the alleged offense in June of 1987 that she would have been unable to understand the nature and quality of her acts or differentiate right from wrong." I do not believe it unreasonable to presume defense counsel was cognizant of Dr. Taylor's general findings on October 15, 1987, when defendant withdrew her motion for a competency hearing. Clearly, defense counsel knew the contents of Dr. Taylor's letter by the time of defendant's trial.