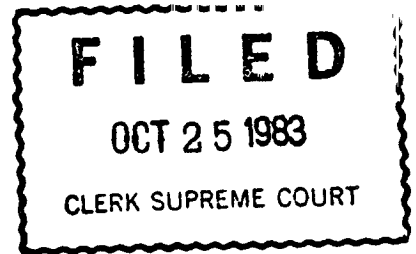


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
FERDINAND KARL VICK,)
Defendant-Appellant.)

Filed October 25, 1983

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Appeal from Linn District Court, Ansel Chapman, Judge.

Defendant charged with murder appeals the trial court's finding of his competency to stand trial. AFFIRMED.

Faith O'Reilly, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, JJ.
Sackett, J., takes no part.

PER CURIAM

Defendant Ferdinand Karl Vick was convicted of attempted murder in February 1980. He appealed. This court held that the trial court should have ordered a hearing to determine defendant's competency to stand trial. See State v. Vick, No. 64696 (Iowa Ct. App. Aug. 25, 1981). The case was remanded for a competency hearing pursuant to Iowa Code section 812.3. We determined that if, upon remand, the trial court found defendant competent as of the time of his trial in 1980, his conviction would stand. If defendant was found to be incompetent, further proceedings were to ensue, following Iowa Code section 812.4.

A competency hearing was held pursuant to the remand, and the trial court found that the defendant had been competent to stand trial in February 1980. The defendant has appealed from this ruling; he contends the evidence does not support the finding of competency.

When a determination of competency has been made in the court below and defendant challenges that determination on appeal, our inquiry is limited to whether the record supports the competency finding. State v. Jackson, 305 N.W.2d 420, 425 (Iowa 1981). A defendant is incompetent if he is suffering from a mental disorder which prevents him from appreciating the charge, understanding the proceedings, or assisting effectively in the defense. See Iowa Code § 812.3.

The trial court erroneously required the State "to prove by a preponderance of the evidence that the defendant was competent" during the 1980 trial. The court based its decision on the fact that the 1977 Iowa Code had expressly placed the burden of proving incompetency on defendant, but the 1979 Iowa Code did not have a similar provision allocating the burden. However, the Iowa Supreme Court in State v. Pedersen, 309 N.W.2d 490 (Iowa 1981), determined that the burden remained with the defendant under the revised code notwithstanding absence of an

express statutory provision. The court stated: "A defendant is initially presumed to be competent, and the burden to establish the contrary should be on him; if the evidence is in equipoise the presumption should prevail." Id. at 496. We do not find sufficient evidence in the record to rebut the presumption of defendant's competency. As pointed out by the State, defendant may have been uncooperative in assisting in his own defense; however, there is not enough evidence for us to determine that he was prevented from assisting in his own defense because of mental incapacity. The record supports the trial court's determination that defendant was competent to stand trial at the time of the 1980 trial.

AFFIRMED.