IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. LUKOUXS BROWN, Defendant-Appellant.	SUPREME COURT 22-1188

APPEAL FROM THE IOWA DISTRICT COURT
FOR WRIGHT COUNTY
HONORABLE GREGG R. ROSENBLADT, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 29th day of November, 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Lukouxs Brown, c/o Wright Co Jail, PO Box 348, Clarion, IA 50525.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Because the preponderance of the evidence established Brown was not competent and cannot be restored to competency in a reasonable amount of time, the district court erred in finding Brown was competent and reinstating proceedings against him.

Authorities

A. The proper standard of review is de novo.

Medina v. California, 505 U.S. 437, 439 (1992)

Drope v. Missouri, 420 U.S. 162 (1975)

Pate v. Robinson, 383 U.S. 375 (1966)

State v. Neiderbach, 837 N.W.2d 180, 190 (Iowa 2013)

State v. Rater, 568 N.W.2d 655, 657 (Iowa 1997)

State v. Roby, 951 N.W.2d 459, 463 (Iowa 2020)

State v. Brown, 930 N.W.2d 840, 844 (Iowa 2019)

State v. Cahill, 972 N.W.2d 19, 27 (Iowa 2022)

State v. El-Amin, 952 N.W.2d 134, 137 (Iowa 2020)

State v. Sweet, 879 N.W.2d 811, 816 (Iowa 2016)

State v. Veal, 930 N.W.2d 319, 327 (Iowa 2019)

State v. Lowe, 812 N.W.2d 554, 566 (Iowa 2012)

State v. Abu Youm, 988 N.W.2d 713, 718 (Iowa 2023)

State v. Jackson, 305 N.W.2d 420, 422 (Iowa 1981)

State v. Aswegan, 331 N.W.2d 93, 95 (Iowa 1983)

State v. Rieflin, 558 N.W.2d 149, 151 (Iowa 1996)

State v. Lyman, 776 N.W.2d 865, 873 (Iowa 2010) (overruled on other grounds by Alcala v. Marriott Int'l, Inc., 880 N.W.2d 699 (Iowa 2016))

State v. O'Neill, 945 N.W.2d 71, 80-81 (Minn. 2020)

State v. Hauge, 973 N.W.2d 453, 466 (Iowa 2022)

Riggins v. Nevada, 504 U.S. 127, 139–40 (1992)

B. Even if this court reviews for errors at law, the district court's conclusion is erroneous.

State v. Williams, 695 N.W.2d 23, 27 (Iowa 2005)

Iowa Code § 812.8(4) (2022)

Iowa Code § 812.8(6)

Iowa Code § 812.9(1)

II. Because it is not authorized by Chapter 812, the district court erred by allowing the State to obtain a second opinion of Brown's competency or potential for restoration at this stage of the proceedings

Issued not addressed in brief

III. The district court erred by not holding a substantive hearing within 14 days of the filing of the report that Brown could not be restored to competency as required by Iowa Code § 812.8(4), violating both his statutory rights and his due process rights under the Fourteenth Amendment.

No Authorities

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on October 31, 2023. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. Because the preponderance of the evidence established Brown was not competent and cannot be restored to competency in a reasonable amount of time, the district court erred in finding Brown was competent and reinstating proceedings against him.

A. The proper standard of review is de novo. "It is well established that the Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial." Medina v. California, 505 U.S. 437, 439 (1992) (citing Drope v. Missouri, 420 U.S. 162 (1975) and Pate v. Robinson, 383 U.S. 375 (1966)). Lukouxs Brown was found to be incompetent and ordered to undergo treatment to restore him to competency. (Order for Restoration

of Competency, Dkt. 24) (App. pp. 24-26). After eight months, the interdisciplinary team treating him concluded he was unable to be restored to competency. (Evaluation Report, Dkt. 40) (Conf. App. pp. 52-61). On discretionary review, the appellate court will review the evidence presented at the hearing to determine whether Brown had been restored and whether there was a substantial probability that he could be restored to competency within a reasonable amount of time such that he can stand trial without violating his due process rights. See Medina, 505 U.S. at 439. "We review constitutional issues de novo." State v. Neiderbach, 837 N.W.2d 180, 190 (Iowa 2013). This is true no matter what the specific nature of the constitutional claim. See e.g., State v. Rater, 568 N.W.2d 655, 657 (Iowa 1997) (reviewing de novo waiver of Sixth Amendment right to counsel); State v. Roby, 951 N.W.2d 459, 463 (Iowa 2020) ("We review constitutional double jeopardy claims de novo."); State v. Brown, 930 N.W.2d 840, 844 (Iowa 2019) ("When a defendant challenges a district court's denial of a

motion to suppress based upon the deprivation of a state or federal constitutional right, our standard of review is de novo."); State v. Cahill, 972 N.W.2d 19, 27 (Iowa 2022) (due process claims involving Brady violations and prosecutorial delay are reviewed de novo); State v. El-Amin, 952 N.W.2d 134, 137 (Iowa 2020) (review of ineffective assistance of counsel claims is de novo); State v. Sweet, 879 N.W.2d 811, 816 (Iowa 2016) (reviewing de novo the imposition of sentence for cruel and unusual punishment); State v. Veal, 930 N.W.2d 319, 327 (Iowa 2019) (reviewing Sixth Amendment systematic exclusions and Batson claims de novo). In each of these types of claims, the appellate court reviews the district court's decision following a hearing in which the court made findings and applied the law to those findings. Because of the constitutional implications, appellate review is de novo.

When reviewing a constitutional issue de novo, the appellate court, although not bound, will "give deference to the factual findings of district court" because of the court's

"opportunity to evaluate the credibility of the witnesses." State v. Lowe, 812 N.W.2d 554, 566 (Iowa 2012). See also Veal, 930 N.W.2d at 327 (noting that when reviewing Sixth Amendment jury claims, the appellate court will give "a great deal of deference" to the district court's credibility determinations); State v. Abu Youm, 988 N.W.2d 713, 718 (Iowa 2023) (when appellate court conducts de novo review it examines the whole record but will give deference to the district court's factual findings due to its opportunity to evaluate the credibility of the witnesses). Thus, the de novo standard of review recognizes and respects the district court's position of being able to observe witnesses firsthand and make any relevant credibility determinations.

In State v. Lyman, the Iowa Supreme Court reviewed the caselaw and rejected the application of a more deferential standard of review advocated in cases such as State v. Jackson, 305 N.W.2d 420, 422 (Iowa 1981), State v. Aswegan, 331

N.W.2d 93, 95 (Iowa 1983), and State v. Rieflin, 558 N.W.2d 149, 151 (Iowa 1996).

> The distinction made in Rieflin, that our review is de novo if the district court did not conduct a competency hearing, but for substantial evidence if the district court held a competency hearing, is inconsistent with our jurisprudence regarding the standard of review when constitutional issues are implicated. We see no reason to treat a defendant's due process rights, implicated by a claim of competency to stand trial, any differently from our review of other constitutional issues. Accordingly, we review a trial court's decision as to a defendant's competency to stand trial de novo and overrule any of our prior cases holding otherwise.

State v. Lyman, 776 N.W.2d 865, 873 (Iowa 2010) (overruled on other grounds by Alcala v. Marriott Int'l, Inc., 880 N.W.2d 699 (Iowa 2016)). In reaching this conclusion, the court noted that the cases adopting a deferential standard of review relied on appellate decisions that reviewed the competency issue under a prior version of the statute which placed the competency decision in the hands of the jury. See Lyman, 776 N.W.2d at 871. Given that the statute had changed and the competency determination is assigned to the district court, and given the

constitutional nature of the claim, the Iowa Supreme Court concluded the proper standard of review was de novo. Lyman, 776 N.W.2d at 873.

Without a convincing rationale for adopting their approach, the number of other jurisdictions that utilize a different standard of appellate review is of no import. See State v. O'Neill, 945 N.W.2d 71, 80-81 (Minn. 2020). Consistency across jurisdictions merely for the sake of consistency is insufficient. "[W]e do not make our determination by a majoritarian numbers game." State v. Hauge, 973 N.W.2d 453, 466 (Iowa 2022) (quoting State v. Gaskins, 866 N.W.2d 1, 33 (Iowa 2015)). What matters is the persuasiveness of the reasoning underlying the rule.

Because the prosecution of an incompetent defendant involves not only his due process rights, but also implicates his other fair trial rights guaranteed by the constitution, the appropriate standard of review is de novo, as it is for all constitutional issues in Iowa.

> Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so.

Riggins v. Nevada, 504 U.S. 127, 139–40 (1992) (Kennedy, J., concurring) (citing Drope v. Missouri, 420 U.S. 162, 171–172 (1975)). Accordingly, this court should review the district court's determination of Brown's competency de novo.

B. Even if this court reviews for errors at law, the district court's conclusion is erroneous. Even if the court were to overrule Lyman and return to a "review at law for substantial evidence" standard of review, the district court's conclusion is not supported by substantial evidence. When conducting a review for substantial evidence, the appellate court "will consider all evidence contained in the record, not just the evidence" supporting the result reached below. See State v. Williams, 695 N.W.2d 23, 27 (Iowa 2005).

The district court's conclusion that Brown is competent is not supported by substantial evidence. Dr. Rosanna Jones-

Thurman's single ninety-minute interaction with Brown and her review of the reports filed by Drs. Andersen, Keller, and Bayless do not adequately support the court's decision. To reach its conclusion, the court disregarded the extensive relationship Drs. Andersen and Keller established with Brown over the course of eight months of inpatient treatment and unduly downplayed the content of Brown's phone call with his sister in April 2022.

A review of the reports of Drs. Andersen and Keller demonstrate that a key challenge, in addition to controlling the positive symptoms of schizophrenia (paranoia, delusions, hallucinations, and aggression), was Brown's "blank" periods and his inability to retain new information. (30-day Report, Dkt. 26; 60-day Report, Dkt. 27; Evaluation Rpt. at 4, Dkt. 30; 60-day Report, Dkt. 32; 60-day Report, Dkt. 36; Evaluation Report, at 3-4, Dkt. 39) (Conf. App. 15, 16, 29, 33, 41, 44-45). Throughout the eight months Brown spent at IMCC, the reports of Drs. Andersen and Keller reveal that Brown's ability to

understand the proceedings and assist in his defense varied. Once the doctors were able to control his aggressive behavior, Dr. Andersen's evaluation indicated Brown did not appreciate the charges against him, could not assist his attorneys, did not understand key personnel in a court trial, and would not be able to follow the proceedings or act appropriately in court. (Evaluation Report at 7-9, Dkt. 28)(Conf. App. pp. 23-25). Specifically, during questioning about the roles of the various people in a jury trial, Brown seemed to have a vague sense of the role of defense attorneys—that they work for him and are trying to get him out of here. He, however, could not identify his defense attorneys although he "thought" he had an attorney. He believed it might be possible to "telepathically or magically" influence the mind of his attorney "through the DEA, CIA, and FBI." He did not understand the role of the prosecutor or the judge and believed the jury would work against the defendant. He was unable to articulate any concept of a plea bargain. (Evaluation Report at 8, Dkt. 28) (Conf. App. p. 24).

A month later, Brown understood that murder was killing someone, but didn't know if it was a serious charge or not. He believed that the best way to help his defense attorneys would be to "sit there and listen and pay attention" but otherwise didn't think there was a more active role he could take in his defense. He told Dr. Andersen that his attorney was Parker Thirnbeck, but that he'd only met him once, over the phone. He also believed that the prosecutor was working for him and wasn't sure if he should meet with the prosecutor if his attorney wasn't present. He knew that the jury would help decide if he was guilty or not guilty, but didn't know what the judge would do and still had no understanding of what a plea bargain was. (Evaluation Report at 5-6, Dkt. 30) (Conf. App. pp. 30-31).

In November, Dr. Andersen reported that Brown had improved. He understood he was charged with first degree murder, but thought the maximum penalty would be two years in prison if he were convicted. He knew the prosecutor was working against him and the defense attorneys were working for

him. He again identified his attorney as Parker Thirnbeck and told Dr. Andersen he had met with him several times on Zoom but not in person. He knew the judge was in charge of the court, but didn't know what the judge's role would be in a bench trial. He also did not understand what role the jury would play and believed the jury was working for him. His understanding of a plea bargain was "to offer you a better sentence – plea whether you are healthy enough to stand trial." Dr. Andersen was optimistic, concluding Brown would be able to assist his attorneys but did not appreciate the charge against him and did not have a rational or factual understanding of the key personnel in a trial. (Evaluation Report at 6, Dkt. 34) (Conf. App. p. 39).

In December, Dr. Andersen concluded Brown understood the essentials of the charge against him and would be moderately able to assist his attorneys. He still only recognized Parker Thirnbeck as his attorney, telling Dr. Andersen that he had talked with him two times, but not in person. He denied

ever meeting with his other attorney, Charles Kenville. He understood that a plea bargain meant "to get a lesser charge." Dr. Andersen believed Brown had a generally factual and rational understanding the key personnel in a trial. (Evaluation Report at 3-4, Dkt. 39) (Conf. App. pp. 44-45).

In February, Dr. Andersen filed an evaluation report describing Brown's significant regression. In this interview, Brown no longer understood basic concepts he had been able to articulate in December. Brown understood he was charged with first degree murder, but now believed that first degree murder was the "most minor" form of murder. He no longer understood what plea options he had when he went to court (guilty or not guilty). He was unable to explain what the phrase "innocent until proven guilty" meant and instead asked Dr. Andersen to repeat the phrase. He knew that one of his attorneys was Peter Thirnbeck but didn't recall that he'd ever spoken with him before. He described his attorney's job as "to keep on good spools" and to keep him "in good heights." He

believed the best way he could help his attorney was by giving him a call. He had "no idea" what the role of the prosecutor was but thought he was working against him. He, however, thought it would be a good idea to meet with the prosecutor without his attorney. He understood the role of the jury to be "to either call the witness and see if he is guilty or not guilty." He did not know who would make a decision about guilt in a bench trial. Brown defined a plea bargain as "whether to make the decision if you are guilty or not." (Evaluation Report at 6-7, Dkt. 40) (Conf. App. pp. 58-59).

Dr. Andersen ultimately concluded that although they had made significant progress in controlling the positive symptoms of Brown's schizophrenia, Brown had no capacity for new learning and his negative symptoms were as yet unresolved. (Evaluation Report at 7, Dkt. 40) (Conf. App. p. 59). His conclusion that further efforts would be futile is supported by Dr. Bayless's report which concluded that Brown's "cognitive deficits render him mentally incapable of following the progress

of trial and unable to meaningfully assist his attorney in his defense." (Neuropsychological Eval. at 5, Dkt. 38) (Conf. App. p. 51).

Although Dr. Jones-Thurman reviewed Dr. Andersen's reports, her conclusion that he understood the proceedings against him and the various people involved in a trial does not take into the account that Brown will seem to learn something only to forget what he'd learned when questioned about it later, as demonstrated by Dr. Andersen's reports described above. (5/6/22 Hearing 26:20-28:9). A single interaction with Brown is insufficient to reveal the extent of his cognitive deficits. Because of her lack of relationship with Brown, Dr. Jones-Thurman relied heavily on Brown's own evaluation of his ability to understand the proceedings and assist in his defense. Dr. Andersen's reports show that Brown had consistently assured his doctors that he can follow the proceedings in a meaningful manner, even while he suffered significant gaps in memory and comprehension and while experiencing active symptoms such

as hallucination and delusions. (Evaluation Report at 9, Dkt. 28; Evaluation Report at 6, Dkt. 34; Evaluation Report at 3-4, Dkt. 39; Evaluation Report at 7, Dkt. 40) (Conf. App. p. 25, 39, 44-45, 59).

Any criticism that Dr. Andersen's report was stale by the time of the hearing is inappropriate. By statute, the hearing on Brown's competency should have been held within fourteen days of the filing of Dr. Andersen's report. See Iowa Code § 812.8(4) (2022). The delay in the hearing cannot be attributed to Brown—the State requested the continuance and Brown objected at every opportunity. (Motion for Hearing, Dkt. 42; Resistance, Dkt. 44; Motion to Dismiss, Dkt. 48) (App. pp. 39-40, 43-45, 50-51).

However, to the extent the most recent evidence should carry greater weight, the evidence of Brown's competency closest in time to the hearing is the phone call Brown had with his sister in April 2022. The district court's description of the call—acknowledging Brown made some "odd statements" but

otherwise concluding he "was able to carry on a good conversation" is an unsupported minimization of the substance of the call. (Order Setting Arraignment, at 6, Dkt. 68) (App. p. 62). The court failed to acknowledge Brown's description of his telepathic communication with old high school friends in Oregon via the CIA. (Def. Ex. D at 0:21 – 1:02; 1:53 – 2:20; 3:04 – 4:35). These are not merely "odd statements." These statements, and his general inability to follow the conversation, demonstrate Brown's incompetence and confirm the conclusions of Drs. Andersen and Bayless. The court's mischaracterization of the content of the phone call, as well as the court's disregard of Dr. Andersen's extensive documentation of Brown's fluctuations in understanding and ability to contribute to his defense, render the court's findings clearly erroneous.

Lastly, the district court expressed concern that Dr. Andersen wanted to free up bed space at IMCC and had "concluded the clock had run out for the defendant, and since

he did not meet in their estimation a number of select criteria within a certain period of time, the defendant was deemed incompetent to stand trial." (Order Setting Arraignment, p. 17, Dkt. 68) (App. p. 73). To the extent the court believed Dr. Andersen had given up too soon, the court had the option to reject the conclusions of both Drs. Andersen and Jones-Thurman and send Brown back to IMCC for further restoration treatment. See Iowa Code § 812.8(6) ("If the court finds by a preponderance of the evidence that the defendant remains incompetent to stand trial but is making progress in regaining competency, the court shall continue the placement..."). Under the statutory competency scheme, Brown could have continued to receive treatment aimed at restoration for up to eighteen months. Iowa Code § 812.9(1).

C. Conclusion. For the reasons argued above and in Appellant's opening brief, the district court's order reinstating proceedings against Brown should be vacated and his case remanded with directions to either terminate Brown's

commitment pursuant to Iowa Code section 812.8(8) or to continue Brown's placement and restoration treatment pursuant to Iowa Code section 812.8(6).

III. The district court erred by not holding a substantive hearing within 14 days of the filing of the report that Brown could not be restored to competency as required by Iowa Code § 812.8(4), violating both his statutory rights and his due process rights under the Fourteenth Amendment.

The hearing held within the statutory fourteen-day deadline was not a substantive hearing and was not the hearing required by Iowa Code section 812.8(4). The State requested a continuance to seek a second opinion before the hearing was set. (Motion, Dkt. 43) (App. 41-42) (2/11/22 Hearing 3:10-13). The additional evaluation and opinion on Brown's competency were entirely the State's request: the court did not decide it needed more information. It agreed to the State's request, and indicated no concern of its own with the reports filed by Drs. Andersen, Bayless, and Keller. (2/11/22 Hearing 3:10 - 22:25).

At the hearing held on February 11, 2022, the State assured the court that they had been in contact with Dr. Jones-

Thurman and she could conduct her evaluation within about a week. The State asked for another hearing to be set "a few weeks down the line" to allow for Dr. Jones-Thurman to conduct her evaluation and write a report. The court agreed, after acknowledging the due process concerns and recognizing that Brown was being held in the Wright County Jail without treatment and without any ability to invoke his speedy trial rights because proceedings were suspended. (2/11/22 Hearing 15:15-18:19; 21:15 – 23:25).

Brown ended up being held in the jail for eighty-four more days before a hearing was held. During this timeframe, his medication was adjusted against the medical advice of Dr. Andersen, and Brown began experiencing the positive symptoms of schizophrenia again, as demonstrated by the phone call with his sister. (Stipulation) (Conf. App. p. 81). (Def. Ex. D). In the phone call with his sister, Brown discusses that he had been communicating with people in Oregon through the CIA. He clarified that the CIA was not the government

agency but was something the jail gave him as a way to communicate with people outside the jail with his mind. (Def. Ex. D at 0:21 – 1:02; 1:53 – 2:20; 3:04 – 4:35). These statements echo Brown's previous hallucinations regarding the CIA when he was receiving treatment at IMCC, as the staff was working to control his positive symptoms of schizophrenia. In August 2022, he "endorse[d] auditory hallucinations," telling Dr. Andersen "Yes – I hear voices – I thought it's the CIA – a normal conscious voice." (Evaluation Report at 6, Dkt. 28) (Conf. App. p. 22). At that time, he also believed he could use the DEA, CIA or FBI to telepathically communicate with his attorneys. (Evaluation Report at 8, Dkt. 28)(Conf. App. p. 24). The reduction in his medication after being housed in the jail caused a resurgence of the positive symptoms of schizophrenia that had been controlled while he was under Dr. Andersen's care. The harm suffered by the violation of Brown's statutory and due process rights is not speculative.

Conclusion. Because Brown's statutory and constitutional rights were violated by the extensive delay in his restoration hearing while he was held in county jail, the district court's order finding Brown was restored should be vacated and his case remanded with instruction to terminate his commitment pursuant to Iowa Code section 812.9.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $0.00, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 3,363 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Melinda J. Nye Dated: 11/29/23

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