IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-1292

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARREON CORTA DRAINE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONS. MARK CLEVE & HENRY LATHAM II, JUDGES

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

TYLER J. BULLER
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
tyler.buller@ag.iowa.gov

MICHAEL WALTON
Scott County Attorney

CALEB COPLEY
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Darreon Corta Draine, appeals his conviction for willful injury causing serious injury, a Class C felony in violation of Iowa Code section 708.4(1)(2017). The defendant pled guilty in the Scott County District Court, the Hon. Mark D. Cleve presiding at the plea hearing and the Hon. Henry Latham II presiding at sentencing.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3). Proceedings relevant to the competency challenge are also discussed in the argument section of Division I, while proceedings relevant to the motion in arrest of judgment are discussed in the argument section of Division II.

Facts

The defendant punched a staff member at Family Resources in Davenport with a closed fist. Minutes, p. 1; Conf. App. 4. The

defendant broke the staff member's nose and caused a "through and through" puncture to his face, swelling, and a concussion. Minutes, p. 1; Conf. App. 4.

ARGUMENT

I. The Defendant, Below and on Appeal, Fails to Articulate Any Specific Facts Warranting a Competency Evaluation. The District Court Did Not Err When It Did Not Order a Competency Evaluation.

Preservation of Error

The State does not contest error preservation as it relates to the defendant's motion for a competency evaluation. To the extent the defendant references the need for a competency evaluation after the motion in arrest was filed in his brief heading (but not in the text of the "discussion"), that error was not preserved and is waived because it is not argued (other than in Division II). *See* Iowa R. App. P. 6.903(2)(g); 6.904(4).

Standard of Review

Review is de novo. *State v. Johnson*, 784 N.W.2d 192, 194 (Iowa 2010).

Merits

A district court should order a competency evaluation when the defendant "alleges specific facts showing 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." Iowa Code § 812.3(1) (2017). The quantum of proof required is probable cause. Iowa Code § 812.3(1), (2) (2017). The defendant did not meet his burden here and the district court did not err when it did not order a competency evaluation.

The district court adequately and accurately summarized the testimony presented at the competency hearing:

> The information presented to the Court at the hearing suggests that the defendant is an immature and angry young man with poor impulse control, who has been diagnosed at various times with a conduct disorder, oppositional defiant disorder, and ADD/ADHD. The most specific allegations that pertain to the factors specified in section 812.3 are that the defendant once misidentified Mr. Tupper as his juvenile attorney, and that during a conference at the jail the defendant physically threatened Mr. Tupper. It should be noted that Mr. Tupper further asserted that the defendant has thrown tantrums and has been a discipline problem at the jail.

5/2/2018 Competency Ruling, p. 2; Conf. App. 87. The court then correctly concluded that the defendant had not proven "by a probable cause standard any allegations that he suffers from one or more

mental disorders which prevent him from appreciating the charge, understanding the proceedings, or assisting in his defense in this case." 5/2/2018 Competency Ruling, p. 2; Conf. App. 87.

There is no dispute that the defendant seems to be angry and immature. There is also no dispute that the defendant has some diagnosable psychological problems. These are unsurprising traits among the violent-offender population: as the assistant county attorney put it, conduct disorder and ADHD "could fairly classify a lot of defendants in the Scott County Jail." Competency Hrg tr. p. 6, lines 9–24. For purposes of argument, we can also take the defense attorney's unsworn statement as true, and assume that the defendant treated his attorney poorly. This, again, can be par for the course in dealing with violent offenders: "There are a lot of defendants who treat their counsel that way." Competency Hrg. tr. p. 7, lines 6–11. Being immature is not a ground that justifies a competency hearing under section 812.3.

This record lacks any specific allegation that the defendant's anger, immaturity, or psychological conditions "prevent[ed] the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense[.]" Iowa Code §

812.3(1), (2) (2017). Even on appeal, the defendant's brief fails to articulate any legal argument specifically on these points, and instead recites the defendant's history and summarily argues the district court abused its discretion. *See* Defendant's Proof Br. at 15–22.

The record from the competency hearing contains little or no evidence to support the defendant's contentions. One of the only specifically relevant facts generated at the hearing (in terms of the section-812.3 criteria) is an unsworn statement from the defense attorney that, on one occasion, the defendant confused his juvenile-court attorney with his district-court attorney. Competency Hrg. tr. p. 2, line 22 — p. 3, line 3. It should come as no surprise that a teenager who has met with multiple adult lawyers may not clearly understand which lawyers serve which roles or remember who is who—particularly in a case that involves a juvenile reverse waiver and multiple appointed lawyers. Moreover, defense counsel admitted in that same unsworn statement that he was able to get through the information he needed to with the defendant, though the defendant apparently got mad at him at the end of their meeting. Competency Hrg. tr. p. 3, lines 12–19.

To the extent any specific argument directed toward the section-812.3 criteria is present in the defendant's brief, his claim must be that either his arguably subnormal intelligence or psychological conditions necessarily require a competency hearing. *See* Defendant's Proof Br. at 15–22. The Iowa Supreme Court has rejected both of those arguments. *See State v. Mann*, 512 N.W.2d 528, 531 (Iowa 1994) (subnormal intelligence "will not in itself bar the trial" due to incompetence); *State v. Edwards*, 507 N.W.2d 393, 395 (Iowa 1993) ("A history of mental illness standing alone, however, does not mean the defendant is incompetent."). In other words, while subnormal intelligence or mental illness *could* be relevant to whether a defendant is competent, the defendant must specifically link his subnormal intelligence or mental illness to deficits that "prevent[him] from appreciating the charge, understanding the proceedings, or assisting effectively in the defense." Iowa Code § 812.3 (2017). The defendant has failed to do so here.

To the extent this Court may believe the question presented in this Division a close one, the appeal can be disposed of due to presumptions and burdens. A defendant is presumed competent and it is his burden to prove otherwise. *E.g., Mann*, 512 N.W.2d 531. The

defendant has failed to overcome that presumption in this case and the district court should be affirmed.

II. The District Court Did Not Abuse Its Discretion When It Denied the Defendant's Motion in Arrest of Judgment. The Defendant Knew He Was Pleading Guilty.

Preservation of Error

The State cannot contest error preservation, as the defendant filed a motion in arrest of judgment and obtained a ruling on the same. 6/11/2018 Motion in Arrest, ¶6; App. 22; sent. tr.

Standard of Review

Review is for an abuse of discretion. *State v. Smith*, 753 N.W.2d 562, 564 (Iowa 2008). "An abuse of discretion will only be found where the trial court's discretion was exercised on clearly untenable or unreasonable grounds." *Id.*

Merits

In the second Division of his brief, the defendant asserts that his motion in arrest should have been granted because, after the fact, he claims he did not understand that he was pleading guilty. Defendant's Proof Br. at 22–27. This assertion is not credible and the defendant is not entitled to relief.

When a defendant's "assertions concerning the knowing and intelligent nature of a guilty plea are directly contradicted by the record, [he] bears a special burden to establish that the record is inaccurate." *Arnold v. State*, 540 N.W.2d 243, 246 (Iowa 1995). The defendant cannot meet that special burden here.

The plea transcript is lengthy and detailed. *See* plea tr. The district court specifically asked the defendant if he understood the following points, and the defendant verbally responded in the affirmative:

- That he needed to answer out loud so that the court reporter could take down his answers. Plea tr. p. 2, lines 8–17.
- That he could take a break and ask his attorney questions at any time during the proceedings. Plea tr. p. 2, lines 18–23.
- The elements of the crime. Plea tr. p. 5, lines 22–24.
- The penalty. Plea tr. p. 5, line 25 — p. 6, line 2.
- "[W]hat the State would have to prove" at trial. Plea tr. p. 6, lines 3–5.
- That he had the right to a jury trial. Plea tr. p. 6, lines 6–8.
- That he had the right to an appointed lawyer. Plea tr. p. 6, lines 9–13.

- That he might have to pay the State back for the lawyer, but only after trial. Plea tr. p. 6, lines 14–18.
- That he could choose not to testify. Plea tr. p. 6, lines 19–21.
- That he had the right to cross-examine the State's witnesses. Plea tr. p. 6, line 22 — p. 7, line 1.
- That he could have his lawyer question the State's witnesses before trial (via deposition). Plea tr. p. 7, lines 2–5.
- That he could compel witnesses to testify at trial. Plea tr. p. 7, lines 6–9.
- That he would be presumed innocent until proven guilty beyond a reasonable doubt. Plea tr. p. 7, lines 10–14.
- That he could be deported if he was not a citizen. Plea tr. p. 7, lines15–19.
- That pleading guilty would give up all of these rights. Plea tr. p. 7, lines 20–23.
- That he was satisfied with the advice and counsel he received from his appointed lawyer. Plea tr. p. 7, line 24 — p. 8, line 1.
- And that, after discussing all these things, he wanted to plead guilty. Plea tr. p. 8, lines 2-5.

This was a lengthy colloquy that was more than adequate under the rules. *See* Iowa R. Crim. P. 2.8(2)(d).

The district court also sought the following information, which the defendant provided in a coherent fashion:

- His age. Plea tr. p. 3, lines 2–3.

- How far he went in school. Plea tr. p. 3, lines 4–12.
- If he spoke English. Plea tr. p. 3, lines 13–18.
- Whether he had been drinking or took drugs. Plea tr. p. 3, lines 19–23.
- Whether anyone had promised him anything outside the plea agreement. Plea tr. p. 8 lines 13–16.
- Whether anyone had threatened or "lean[ed]" on him to plead guilty. Plea tr. p. 8, lines 17–19.
- Whether anyone had promised him what sentence he would receive. Plea tr. p. 8, lines 20-24.
- Whether he had received and reviewed the minutes of testimony. Plea tr. p. 10, lines 21–25.
- Whether the minutes were accurate and complete. Plea tr. p. 11, lines 1-3.

These answers informed the district court's correct conclusion that the defendant was knowingly, voluntarily, and intelligently pleading guilty. Plea tr. p. 12, lines 9–22.

The district court also permitted defense counsel to elicit a factual basis:

> **MR. TUPPER:** … On January 25, 2018, in Scott County, you assaulted a Mr. White who worked at Family Resources?
>
> **THE DEFENDANT:** Yes.
>
> **MR. TUPPER:** And did you do so with the specific intent to cause serious injury to him?

THE DEFENDANT: Yes.

MR. TUPPER: And in fact, you did cause serious injury to him, is that correct?

THE DEFENDANT: Yes.

MR. TUPPER: And that he ended up with a broken nose and punctures to his face and other injuries, correct?

THE DEFENDANT: Yes.

MR. TUPPER: Again, that happened in Scott County, Iowa?

THE DEFENDANT: (Nods head.)

Plea tr. p. 9, lines 8–23. The judge asked the defendant to explain if he felt justified at the time of assault, and the defendant and his attorney clarified an ambiguous point:

MR. TUPPER: … In terms of the assault that occurred, did you think you had a right to do that to Mr. White?

THE DEFENDANT: Not at all.

MR. TUPPER: So you don't think you were justified in what you did?

THE DEFENDANT: No.

Plea tr. p. 9, line 24 — p. 10, line 20. The defendant, apparently after expressing a concern to counsel, also made clear that he agreed with much of the minutes of testimony, but specifically denied a portion

related to striking the victim with a radio—the defendant said he just punched him with his fist. Plea tr. p. 11, lines 12–25.

After the plea hearing, the defendant filed a motion in arrest of judgment, claiming he "did not understand that he was entering a guilty plea." 6/11/2018 Motion in Arrest, ¶6; App. 22. The defendant's plea-hearing attorney (Tupper) moved to withdraw, claiming a potential conflict. 6/11/2018 Motion to Withdraw; App. 20. New counsel (Walker) was then appointed. 6/27/2018 Order; App. 26.

At the motion-in-arrest hearing, the defendant claimed he signed papers but "didn't know" that he was pleading guilty. Sent. tr. p. 4, lines 18–23. He claimed he didn't want to plead guilty and instead wanted a trial. Sent. tr. p. 5, lines 6–17.

The judge presiding over the motion-in-arrest hearing (a different judge than who took the plea) found that the plea judge was "very deliberate and careful in his questioning with the Defendant" and "ensur[ed] that [the defendant] fully understood his constitutional rights, that he fully understood all the elements of the offense and followed up with him as far as the factual basis that he provided in support of the plea of guilty." Sent. tr. p. 7, line 18 — p. 8,

line 4. The court noted that the defendant's contentions about signing a paper could only have been referring to the plea agreement, as the plea was taken orally, in accordance with the rules. Sent. tr. p. 8, lines 5–13.

The record in this case demonstrates that the defendant knowingly and voluntarily pled guilty and that his after-the-fact buyer's remorse is a fiction. Although the defendant contends he did not understand he was pleading guilty, these were some of the questions at the plea hearing:

> **THE COURT:** Do you understand that if you plead guilty at this time, you give up all of the rights I have just listed for you?
>
> **THE DEFENDANT:** Yeah.

Plea tr. p. 7, lines 20–23.

> **THE COURT:** After being informed of all of these rights, what is your plea to the charge of Willful Injury Resulting in Serious Injury, guilty or not guilty?
>
> **THE DEFENDANT:** Guilty.

Plea tr. p. 8, lines 2–5.

> **THE COURT:** All right. After asking you those questions, I must again ask you what is your plea to the charge of Willful Injury Resulting in Serious Injury, guilty or not guilty?
>
> **THE DEFENDANT:** Guilty.

Plea tr. p. 11, lines 4–8. The defendant knew he was pleading guilty.

The Supreme Court has held that denial of a motion in arrest will be upheld when the defendant, "with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear or persuasion." *State v. Weckman*, 180 N.W.2d 434, 436 (Iowa 1970); *accord State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998); *State v. Ramirez*, 400 N.W.2d 586, 588 (Iowa 1987). The colloquy discussed above sufficiently demonstrates that the defendant understood the nature of the charge and the consequences of the plea, and that he entered his plea understandably and without fear or persuasion. *See* plea tr. The district court did not abuse its discretion when it denied the motion in arrest of judgment.

In his brief, the defendant pulls out one snippet of the plea transcript and essentially argues it was confusing. Defendant's Proof Br at 26–27. This distorts the record. As thoroughly discussed above, the plea transcript was lengthy, detailed, and conducted an appropriate inquiry into the knowing and voluntary nature of the plea. *See* plea tr. Like many criminal defendants, it appears this one

"had a change of heart" after pleading guilty. *State v. Speed*, 573 N.W.2d 594, 597–98 (Iowa 1998). That is no basis for relief. *Id.*

As with Division I, if this Court were inclined to view this as a close question, the burdens and presumptions favor the State. Review is for abuse of discretion. *Smith*, 753 N.W.2d at 564. And the defendant has not overcome his "special burden" to undermine the plea transcript. *See Arnold*, 540 N.W.2d at 246. The district court did not abuse its discretion and the defendant is not owed relief.

CONCLUSION

This Court should affirm the defendant's conviction.

REQUEST FOR NONORAL SUBMISSION

The issues presented are not novel or complex. This case should be decided on the briefs.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

TYLER J. BULLER
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
tyler.buller@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

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) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **2,859** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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TYLER J. BULLER
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
tyler.buller@ag.iowa.gov