

IN THE SUPREME COURT OF IOWA

---

STATE OF IOWA, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. ) S.CT. NO. 18-1292  
 )  
 DARREON CORTA DRAINE, )  
 )  
 Defendant-Appellant. )

---

APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY  
HONORABLE MARK CLEVE, JUDGE  
HONORABLE HENRY LATHAM II, JUDGE

---

APPELLANT'S BRIEF AND ARGUMENT  
AND  
REQUEST FOR ORAL ARGUMENT

---

MARK C. SMITH  
State Appellate Defender

MELINDA J. NYE  
Assistant Appellate Defender  
mnye@spd.state.ia.us  
appellatedefender@spd.state.ia.us

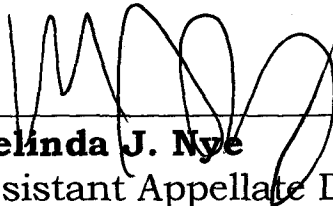
STATE APPELLATE DEFENDER'S OFFICE  
Fourth Floor Lucas Building  
Des Moines, Iowa 50319  
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT

**CERTIFICATE OF SERVICE**

On the 14th day of January, 2019, 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 Darreon Corta Draine, No. 6028085, Iowa Medical & Classification Center, 2700 Coral Ridge Avenue, Coralville, IA 52241.

APPELLATE DEFENDER'S OFFICE



---

**Melinda J. Nye**  
Assistant Appellate Defender  
Appellate Defender Office  
Lucas Bldg., 4<sup>th</sup> Floor  
321 E. 12<sup>th</sup> Street  
Des Moines, IA 50319  
(515) 281-8841  
mnye@spd.state.ia.us  
appellatedefender@spd.state.ia.us

MJN/d/11/18  
MJN/lr/01/19

## TABLE OF CONTENTS

	<u>Page</u>
Certificate of Service .....	2
Table of Authorities.....	4
Statement of the Issues Presented for Review.....	6
Routing Statement.....	8
Statement of the Case.....	8
 Argument	
I. The district court erred by not suspending proceedings and ordering Draine undergo a competency evaluation either at the time it was requested or after Draine filed his motion in arrest of judgment.....	11
II. The district court abused its discretion by failing to grant Draine’s motion in arrest of judgment and allow him to withdraw his guilty plea .....	22
Conclusion.....	27
Request for Oral Argument .....	28
Attorney's Cost Certificate.....	28
Certificate of Compliance .....	29

## TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996) .....	21
Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960) .....	12
Griffin v. Lockhart, 935 F.2d 926 (8th Cir. 1991) .....	15
Lafferty v. Cook, 949 F.2d 1546 (10th Cir. 1991).....	20
Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966) .....	12-13
State v. Blum, 560 N.W.2d 7 (Iowa 1997).....	23
State v. Einfeldt, 914 N.W.2d 773 (Iowa 2018) .....	12-15, 19-22
State v. Edwards, 507 N.W.2d 393 (Iowa 1993).....	12, 14
State v. Kempf, 282 N.W.2d 704 (Iowa 1979).....	11
State v. Lucas, 323 N.W.2d 228 (Iowa 1982) .....	11
State v. Mann, 512 N.W.2d 528 (Iowa 1994).....	12, 14-15
State v. Myers, 653 N.W.2d 574 (Iowa 2002) .....	22
State v. Pedersen, 309 N.W.2d 490 (Iowa 1981) .....	12
State v. Speed, 573 N.W.2d 594 (Iowa 1998) .....	23

Statutes and Court Rule:

Iowa Code § 812.3 (2017) .....11

Iowa Code § 812.3(1) (2017) .....13

Iowa R. Crim. P. 2.8(2)(a) .....23

Iowa R. Crim. P. 2.82(2)(b) .....22

Other Authority:

Richard J. Bonnie, The Competence of Criminal Defendants:  
Beyond Dusky and Drope, 47 U. Miami L. Rev. 539  
(1993) .....15, 19

## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

**I. THE DISTRICT COURT ERRED BY NOT SUSPENDING PROCEEDINGS AND ORDERING DRAINE UNDERGO A COMPETENCY EVALUATION EITHER AT THE TIME IT WAS REQUESTED OR AFTER DRAINE FILED HIS MOTION IN ARREST OF JUDGMENT.**

### **Authorities**

State v. Kempf, 282 N.W.2d 704, 706 (Iowa 1979)

State v. Lucas, 323 N.W.2d 228, 232 (Iowa 1982)

Iowa Code § 812.3 (2017)

State v. Einfeldt, 914 N.W.2d 773, 778 (Iowa 2018)

State v. Edwards, 507 N.W.2d 393, 395 (Iowa 1993)

State v. Mann, 512 N.W.2d 528, 531 (Iowa 1994)

Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824, 825 (1960)

State v. Pedersen, 309 N.W.2d 490, 496 (Iowa 1981)

Pate v. Robinson, 383 U.S. 375, 378, 86 S.Ct. 836, 838, 15 L.Ed.2d 815, 818 (1966)

Iowa Code § 812.3(1) (2017)

Griffin v. Lockhart, 935 F.2d 926, 930 (8th Cir. 1991)

Richard J. Bonnie, The Competence of Criminal Defendants: Beyond Dusky and Drope, 47 U. Miami L. Rev. 539, 563 (1993)

Lafferty v. Cook, 949 F.2d 1546, 1550 (10th Cir. 1991)

Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996)

**II. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO GRANT DRAINE'S MOTION IN ARREST OF JUDGMENT AND ALLOW HIM TO WITHDRAW HIS GUILTY PLEA.**

**Authorities**

Iowa R. Crim. P. 2.82(2)(b)

State v. Myers, 653 N.W.2d 574, 581 (Iowa 2002)

State v. Blum, 560 N.W.2d 7, 9 (Iowa 1997)

Iowa R. Crim. P. 2.8(2)(a)

State v. Speed, 573 N.W.2d 594, 597 (Iowa 1998)

## **ROUTING STATEMENT**

This case should be transferred to the Court of Appeals because the issues raised involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

## **STATEMENT OF THE CASE**

**Nature of the Case:** This is an appeal by the Defendant-Appellant, Darreon Corta Draine, from his conviction, judgment and sentence for willful injury causing serious injury following his guilty plea in the Scott County District Court.

**Course of Proceedings:** The State charged sixteen-year-old Darreon Draine with willful injury causing serious injury, a class C forcible felony in violation of Iowa Code section 708.4(1) (2017). (Trial Information) (App. pp. 6-8). Draine sought a reverse waiver to juvenile court but was denied after a hearing. (Motion 2/21/18; Ruling 3/30/18) (App. pp. 4-5; 9-14).

Draine filed a motion requesting the court suspend proceedings and order Draine to undergo a competency



examination. (Motion 4/30/18) (Conf. App. pp. 84-85). After a hearing, the motion was denied. (Ruling & Order 5/2/18) (Conf. App. pp. 86-88). Just two weeks later, Draine signed a plea agreement with the State and pled guilty as charged. (Memorandum of Plea Agreement; Plea Tr. p. 12 L. 9-22) (App. pp. 18-19). The court accepted Draine's plea and ordered the preparation of a presentence investigation report. (Order for PSI) (App. pp. 15-17).

Draine subsequently filed a motion in arrest of judgment and his attorney sought to withdraw. (Motion in Arrest of Judgment; Motion to Withdraw) (App. pp. 22-23; 24-25). The court granted the motion to withdraw, appointed a new attorney to represent Draine, and set a hearing for the motion in arrest of judgment and sentencing. (Order Setting Hearing; Order Appointing Counsel) (App. pp. 24-25; 26-27).

At the hearing, Draine asserted that he did not realize he was entering a guilty plea during the plea proceeding. The district court denied Draine's motion in arrest of judgment and continued to sentencing. (Sent. Tr. p. 3 L. 3 – p. 5 L. 20; p. 7 L.

11 - p. 8 L. 18). Because of Draine's age, the provisions of 901.5(14) (2017) applied and Draine was eligible for a deferred judgment or sentence. However the court determined a prison term was most appropriate and sentenced Draine to an indeterminate ten-year term of imprisonment. (Sent. Tr. p. 13 L. 23 – p. 16 L. 22; Sentencing Order) (App. pp. 28-30). Draine file a timely notice of appeal. (Notice of Appeal) (App. p. 31).

**Facts:** To provide a factual basis for his guilty plea, Draine admitted that on January 25, 2018, while he was living in a juvenile center, he assaulted a counselor with the specific intent to cause serious injury to him and did cause serious injury, including a broken nose and other facial wounds. (Plea Tr. p. 8 L. 25 – p. 10 L. 19). Draine also agreed the court could consider the minutes of testimony to establish the factual basis with the exception that he denied he hit the counselor with a radio but used his fists only. (Plea Tr. p. 10 L. 21 – p. 11 L. 25).

## ARGUMENT

### **I. THE DISTRICT COURT ERRED BY NOT SUSPENDING PROCEEDINGS AND ORDERING DRAINE UNDERGO A COMPETENCY EVALUATION EITHER AT THE TIME IT WAS REQUESTED OR AFTER DRAINE FILED HIS MOTION IN ARREST OF JUDGMENT.**

**A. Preservation of Error:** Draine's attorney requested the court suspend proceedings and order Draine to undergo a competency evaluation. (Competency Motion) (Conf. App. pp. 84-85). After a hearing, the court denied the motion. (Ruling and Order) (App. pp. 86-88). Error was therefore preserved. See State v. Kempf, 282 N.W.2d 704, 706 (Iowa 1979) (finding error preserved when the court overruled defense counsel's objection that the defendant was incompetent to plead guilty).

However, if the issue of competency had not been raised in the district court, the appellate court can still review the issue. Traditional rules of error preservation do not apply to claims of incompetency. State v. Lucas, 323 N.W.2d 228, 232 (Iowa 1982). Additionally, the code tasks the court with recognizing when a defendant is suffering from a mental disorder rendering the defendant incompetent. Iowa Code § 812.3 (2017).

**B. Standard of Review.** The conviction of an incompetent criminal defendant violates federal and state constitutional guarantees of due process. State v. Einfeldt, 914 N.W.2d 773, 778 (Iowa 2018). Because a constitutional question is raised, the appellate review of the issue is de novo. State v. Edwards, 507 N.W.2d 393, 395 (Iowa 1993).

**C. Discussion.** The basic test for competence is whether the defendant has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . and . . . a rational as well as factual understanding of the proceedings against him.” State v. Mann, 512 N.W.2d 528, 531 (Iowa 1994) (quoting Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824, 825 (1960)). A defendant has the burden of proving, by a preponderance of the evidence, that he is incompetent to stand trial. State v. Pedersen, 309 N.W.2d 490, 496 (Iowa 1981) (citations omitted).

The conviction of an incompetent defendant violates state and federal due process. Pate v. Robinson, 383 U.S. 375, 378,

86 S.Ct. 836, 838, 15 L.Ed.2d 815, 818 (1966); State v. Einfeldt, 914 N.W.2d 773, 779 (Iowa 2018). The United States Constitution requires a procedural mechanism to assess the need for a competency evaluation. At a minimum, a threshold hearing is necessary “to determine if there is sufficient doubt regarding the defendant’s mental capacity to show a need for further evaluation. Further, the Supreme Court has made it clear that a defendant cannot waive the due process right to competency.” State v. Einfeldt, 914 N.W.2d at 779.

Iowa Code chapter 812 implements due process safeguards ensuring the competency of criminal defendants. Einfeldt, 914 N.W.2d at 779. “[A]t any stage of a criminal proceeding” a competency hearing is required when the district court finds probable cause that there exist “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 court may make a finding of probable cause either after application by the

defendant or the defendant's attorney, or after holding a probable cause hearing on its own motion. Id. "Probable cause exists for a competency hearing when a reasonable person would believe that there is a substantial question of the defendant's competency." Einfeldt, 914 N.W.2d at 779.

The determination of whether to a competency evaluation is required is a legal question, and the trial court's discretion is not involved. State v. Edwards, 507 N.W.2d 393, 395 (Iowa 1993). "[A] hearing should be held when a reasonable trial judge would experience doubt on whether the defendant was competent to stand trial." Einfeldt, 914 N.W.2d at 780. On appeal, the "task 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." Kempf, 282 N.W.2d at 707. Factors bearing on whether a competency hearing is required include "(1) the defendant's apparent irrational behavior, (2) any other demeanor that suggests a competency problem, and (3) any prior medical opinion of which the trial court is aware." Mann, 512 N.W.2d

at 531.

Additionally, “an express doubt by the attorney for the accused is a legitimate factor to consider.” Einfeldt, 914 N.W.2d at 780 (quoting Griffin v. Lockhart, 935 F.2d 926, 930 (8th Cir. 1991). “[T]he attorney is best situated to know whether the defendant’s impairments compromise the defense of the case.” Richard J. Bonnie, The Competence of Criminal Defendants: Beyond Dusky and Drope, 47 U. Miami L. Rev. 539, 563 (1993).

In this case, the district court abused its discretion by failing to order a competency examination. In his initial filing, Draine’s attorney referred to Draine’s extensive experience in the juvenile justice system, noting specifically:

At the time of the alleged assault by Defendant he had been placed at Family Resources Annie Wittenmyer residential program. Prior to placement, the Defendant had received services in juvenile court for several years.

Dr. Stecker identified the Defendant as suffering from Conduct Disorder, Oppositional Defiant Disorder, ADHD Combined type and Intellectual Disability – Mild. In 2016, a University of Iowa Hospital report stated Defendant’s “general intellectual abilities were estimated to be in the

extremely low range (WASI-II FSIQ = 60; 0.4 percentile), with difficulties observed across verbal and nonverbal domains.” Throughout these proceedings, counsel has had difficulty communicating with Defendant regarding his case.

(Motion for Competency) (App. p. 84).

At the hearing, Draine’s attorney provided an example of his concerns with Draine’s competency and his ability to assist in his defense. He reiterated his concern that during his conversations with Draine, he had the sense that Draine did not understand what he told him and estimated his attention span at about twenty minutes. Counsel also recounted an example of the difficulties he’d had working with Draine. When he visited Draine in jail, Draine didn’t know who he was, even though they had met several times and he had been able to identify him in the past. After clarifying who he was, counsel was able to get through the necessary issues with some difficulty but without any real problems. However, as he waited to be released from the room by jail staff, Draine began threatening him for talking to him and for looking at him. (Hearing Tr. p. 2 L. 15 – p. 3 L. 19). His attorney expressed his



concerns about Draine being able to manage himself during trial of the meeting, and noted other erratic behavior since he'd been in jail, such as urinating in his cell and threatening staff. (Hearing Tr. p. 4 L. 4 – 17).

As well, the court took judicial notice of the juvenile records that had already been admitted in conjunction with Draine's motion for reverse waiver. These documents support his attorney's claim. They are rife with references to Draine's mental health issues, developmental delays, and erratic and unreasonable behavior. Specifically, the documentation indicates Draine had been removed from his home for threatening both suicide and homicide when he was fourteen years old. (Report to the Court 12/9/16) (Conf. App. p. 55). After a brief hospitalization, he was placed in various youth shelters until a bed opened up in a Psychiatric Mental Institute for Children (PMIC). During his initial hospitalization, he was diagnosed with ADHD and ODD. He was prescribed a variety of medications, including antipsychotics and antidepressants, such as risperidone, fluoxetine, lithium, hydroxyzine, clonidine,

and Abilify. (Case Plan p. 8, 14; Vera French records, p. 2-3) (Conf. App. pp. 47, 53; 31-32). He struggled to take his medication consistently. (Family Case Plan, p. 4) (Conf. App. p. 43). After placement at the PMIC in September 2016, Draine made some progress and attended therapy, but still struggled to control his behavior and continued to act out violently. (Report to the Court) (Conf. App. pp. 55-56).

Records from The University of Iowa Hospitals and Clinics from 2015 noted that he had been held back a grade by the time he was thirteen and was referred “for evaluation of his cognitive/intellectual skills due to concerns with possible intellectual deficits impacting” his current behavioral problems. (U of Iowa Records, p. 7) (Conf. App. p. 64). His testing indicated that his general intellectual abilities were estimated in “extremely low range” a .4 percentile, or an FSIQ of 60. His verbal comprehension skills were also estimated in the “extremely low range” at .1 percentile. (U of Iowa Records, p. 8) (Conf. App. p. 65). He demonstrated “poor verbal abstract reasoning and word knowledge skills.” His perceptual

reasoning skills were in the borderline range (2nd percentile). (U of Iowa Records p 8) (Conf. App. p. 65). It was noted that his adaptive functioning and social functioning were lower than expected for his age, but not as low as his verbal comprehension or general intellectual functioning. (U of Iowa Records, p. 9) (Conf. App. p. 66).

Thus, Draine's attorney "made a credible initial showing that [Draine] could not have the kind of relationship with [his] lawyer to assist in the development of [his] legal defense due to [his] mental state." Einfeldt, 914 N.W.2d at 780-781. Critical to the assessment of competency is an evaluation of a defendant's ability to interact with his attorney at the present time and the ability "to recognize and relate pertinent information to counsel concerning the facts of the case." Einfeldt, 914 N.W.2d at 781 (quoting Bonnie, 47 U. Miami L. Rev. at 561). "[T]he 'rational understanding' required [for competency] means more than being 'oriented to time and place' but includes accurate perception of reality and proper response to the world around the defendant, not disruptive behavior and

a paranoid relationship with counsel.” Einfeldt, 914 N.W.2d at 781 (quoting Lafferty v. Cook, 949 F.2d 1546, 1550 (10th Cir. 1991)).

Draine was a sixteen-year-old child at the time of the hearing. Medical records indicated a previous diagnosis of ADHD, ODD, conduct disorder and intellectual disability. His general intellectual abilities were rated as extremely low and he had an FSIQ of 60. (U of Iowa Records, p. 8, 13) (Conf. App. pp. 65, 70). He had consistently demonstrated problems controlling his actions and showed a history of paranoia, anger and violence toward people who are trying to help him, such as his mother, staff, and his attorney.

Just as in Einfeldt, “[t]here is, perhaps, the question of malingering.” Einfeldt, 914 N.W.2d at 782. The district court, in denying the motion for a competency exam, characterized Draine as an “immature and angry young man with poor impulse control.” (Ruling, p. 1) (App. p. 86). However,

“[f]or the defendant, the consequences of an erroneous determination of competence are dire. Because he lacks the ability to communicate effectively with counsel, he may be unable to exercise other ‘rights deemed essential to a fair trial.’ ” On the other hand, “[b]y comparison to the defendant’s interest, the injury to the State of the opposite error—a conclusion that the defendant is incompetent when he is in fact malingering—is modest.” The teaching of Cooper regarding comparative interests of the state and the defendant is particularly compelling in the context of a preliminary proceeding to simply order a mental health evaluation.

It is important that our district court judges not put the proverbial cart before the horse in the competency setting. The district court was not called upon in this case to make a definitive determination of competency. The only question was whether the relatively low threshold had been met to require further evaluation and a *subsequent* hearing on the question of competency after a professional evaluation. The trial court must take care to ensure that the preliminary hearing to determine whether there is a bona fide doubt as to the defendant’s competency does not turn into a substitute for the determination of competency itself.

Einfeldt, 914 N.W.2d at 782 (quoting Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996)) (other internal citations omitted).

In this case, the district court abused its discretion when it concluded Draine had not raised a sufficient question of competency to stay the proceedings and justify a competency

evaluation. Accordingly, Draine's conviction should be reversed and remanded to the district court for further proceedings. See Einfeldt, 914 N.W.2d at 784-85.

## **II. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO GRANT DRAINE'S MOTION IN ARREST OF JUDGMENT AND ALLOW HIM TO WITHDRAW HIS GUILTY PLEA.**

**A. Error Preservation.** A motion in arrest of judgment must be filed within 45 days of a guilty plea and no less than five days before the date set for pronouncing judgment. Iowa R. Crim. P. 2.82(2)(b). Draine timely filed his motion, and after a hearing, the district court denied Draine's motion, concluding his plea was voluntarily entered. (Sent. Tr. p. 7 L. 11 – p. 8 L. 18). Accordingly, error has been preserved.

**B. Standard of Review.** The appellate courts review a district court's denial of a motion in arrest of judgment for an abuse of discretion. State v. Myers, 653 N.W.2d 574, 581 (Iowa 2002). An abuse of discretion exists when the district court exercises its discretion on grounds or for reasons which are clearly untenable or to an extent clearly unreasonable. State v. Blum, 560 N.W.2d 7, 9 (Iowa 1997).

**C. Discussion.** A motion in arrest of judgment “shall be granted when upon the whole record no legal judgment can be pronounced.” Iowa R. Crim. P. 2.8(2)(a). An involuntary plea is one basis for granting a motion in arrest of judgment. State v. Speed, 573 N.W.2d 594, 597 (Iowa 1998).

Draine sought to withdraw his plea because he did not understand he was entering a guilty plea at the hearing. (Motion in Arrest of Judgment) (App. pp. 22-23). At the same time, counsel filed a motion to withdraw, noting that Draine stated he did not understand he was entering a guilty plea and would likely argue that counsel did not properly advise him about the plea proceeding. (Motion to Withdraw; 6/27/18 Hearing Tr. p. 2 L. 19 - p. 3 L. 7) (App. pp. 20-21). The court allowed counsel to withdraw and appointed a new attorney to represent Draine. (Order Substituting Counsel; 6/27/18 Hearing Tr. p. 3 L. 17-21) (App. pp. 26-27).

At the hearing, Draine testified that he didn't remember the last time he was in court. Upon prompting, he did remember being at a hearing with his former attorney. He

testified that his understanding of that hearing was that “I was – during the hearing, he told me to sign some papers, so I signed it. I didn’t look to see what it was. I didn’t know I was pleading guilty to that charge, though.” (Sent. Tr. p. 4 L. 9-23). He remembered talking to the judge about signing the paper and testified that although he answered questions for the judge but didn’t understand them. (Sent. Tr. p. 4 L. 24 – p. 5 L. 6). Draine’s attorney offered no further argument on his behalf. (Sent. Tr. p. 7 L. 2-7). The State did not cross-examine Draine, but instead relied on the transcript of the plea hearing, arguing the record spoke for itself. (Sent. Tr. p. 5 L. 24 – p. 7 L. 1).

The court concluded that the judge who accepted Draine’s plea “was very deliberate and careful in his questioning with the Defendant. It clearly reflects that Judge Cleve was ensuring that Mr. Draine 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 he provided in support of the plea of guilty.” (Sent Tr. p. 7 L. 18 – p. 8 L. 4). The court also noted that the only paperwork Draine could have been



referring to was the written plea agreement, but that there “was nothing in this record to indicate there would be any other documents to distract his attention or his ability to understand the proceedings when he was being questioned by Judge Cleve in that plea proceeding.” (Sent. Tr. p. 5 – 13). Thus, the court denied Draine’s motion.

The district court abused its discretion when it ignored the rest of the record and focused solely on the transcript of the plea proceeding. In this case, Draine’s attorney had already sought a competency evaluation, describing how he’d had trouble communicating with Draine. The juvenile records judicially noticed by the court in the earlier proceedings indicated that Draine’s general intellectual abilities were in the “extremely low range” in the .4 percentile, with an FSIQ of 60. His verbal comprehension skills were also estimated in the “extremely low range” in the .1 percentile. (U of Iowa Records, p. 8) (Conf. App. p. 65). He demonstrated “poor verbal abstract reasoning and word knowledge skills.” His perceptual reasoning skills

were in the borderline range (2nd percentile). (U of Iowa Records p 8) (Conf. App. p. 65).

With this background, it is unreasonable to rely solely on the contents of the plea proceeding to determine that Draine's plea was entered voluntarily. His claim was not based on any legal deficiency in the advisements and explanations given by the district court, but is rooted in Draine's inability to understand and intelligently participate in the proceedings, given his demonstrated low intellectual functioning and ADHD.

For example, the district court, during the plea proceeding, advised Draine:

All right. The first thing the State would have to prove then is that on or about January 25th of this year here in Scott County, that you did commit an act which caused serious injury to a Mr. White who was a staff member at the Summit Program; two, that the act was not justified; and three, that it was your intent in committing the act to cause a serious injury to Mr. White; the fourth thing the State would have to prove is that you actually caused a serious injury to Mr. White. As I mentioned, I told you what the maximum penalty is.

Also, under Iowa Code Section 901.5(14), if you are less than 18 years of age, all sentencing options that are set forth in that code section are available to the Court at the time of sentencing.

Mr. Draine, did you understand the code sections I just read to you?

(Plea Tr. p. 5 L. 8-22).

While this portion of the plea transcript may be legally sufficient to advise a defendant of the elements of willful injury and the sentencing options available to the court, it is full of legal terminology and includes one sentence that is ninety-three words long. Thus, it is credible that Draine, a defendant with “extremely low” verbal comprehension skills in the bottom .1 percentile, might not have actually understood everything that was said to him and the legal repercussions of his answers.

Under these unusual circumstances, the district court abused its discretion in not granting Draine’s motion in arrest of judgment. Accordingly, his conviction should be vacated and his case remanded for further proceedings.

### **CONCLUSION**

Because the district court abused its discretion in failing to order Draine undergo a competency evaluation and in failing to grant his motion in arrest of judgment, Draine’s conviction

and sentence should be vacated and his case remanded for further proceedings.

**REQUEST FOR ORAL ARGUMENT**

Counsel requests to be heard in oral argument.

**ATTORNEY'S COST CERTIFICATE**

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$ 2.97, and that amount has been paid in full by the Office of the Appellate Defender.

MARK C. SMITH  
State Appellate Defender

MELINDA J. NYE  
Assistant Appellate Defender

**CERTIFICATE OF COMPLIANCE WITH  
TYPEFACE REQUIREMENTS AND TYPE-VOLUME  
LIMITATION FOR BRIEFS**

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 3,727 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 1-10-19

\_\_\_\_\_  
MELINDA J. NYE  
Assistant Appellate Defender  
Appellate Defender Office  
Lucas Bldg., 4<sup>th</sup> Floor  
321 E. 12<sup>th</sup> Street  
Des Moines, IA 50319  
(515) 281-8841  
mnye@spd.state.ia.us  
appellatedefender@spd.state.ia.us