IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. LUKOUXS BROWN, Defendant-Appellant.	SUPREME COURT NO. 22-1188

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

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF SERVICE

On the 20th 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

Statutes:

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

Lamasters v. State, 821 N.W.2d 856, 862 (Iowa 2012)

State v. Johnson, 784 N.W.2d 192, 194 (Iowa 2010)

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

Cooper v. Oklahoma, 517 U.S. 348, 354 (1996)

Medina v. California, 505 U.S. 437, 453 (1992)

State v. Lyman, 776 N.W.2d 865, 871 (Iowa 2010), overruled on other grounds by Alcala v. Marriott Int'l, Inc., 880 N.W.2d 699, 708, n.3 (Iowa 2016)

Dusky v. United States, 362 U.S. 402, 402 (1960)

State v. Einfeldt, 914 N.W.2d 773, 778–79 (Iowa 2018)

Iowa Code § 812.3 (2022)

Iowa Code § 812.8(3) (2022)

Iowa Code § 812.8(6) (2022)

Iowa Code § 812.8(8) (2022)

Iowa Code § 812.9(3) (2022)

Iowa Code § 812.9(4) (2022)

Iowa Code § 812.8(5) (2022)

Iowa Code § 814.3 (2022)

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.

Authorities

State v. Brothern, 832 N.W.2d 187, 191 (Iowa 2013)

Lamasters v. State, 821 N.W.2d 856, 862 (Iowa 2012)

State v. Childs, 898 N.W.2d 177, 181 (Iowa 2017)

Iowa Code § 812.3 (2022)

Iowa Code § 812.3(2) (2022)

Iowa Code § 812.5(2) (2022)

Iowa Code § 812.6(2)(a) (2022)

Iowa Code § 812.7 (2022)

Iowa Code § 812.4 (2022)

Iowa Code § 812.6 (2022)

Iowa Code § 812.8 (2022)

Iowa Code § 812.9 (2022)

Iowa Code § 812.8(4) (2022)

Iowa Code § 812.9(4) (2022)

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.

Authorities

Iowa Code § 812.8(4) (2022)

Lamasters v. State, 821 N.W.2d 856, 862 (Iowa 2012)

State v. Childs, 898 N.W.2d 177, 181 (Iowa 2017)

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

Iowa Code § 812.8(3) (2022)

State v. Einfeldt, 914 N.W.2d 773, 779 (Iowa 2018)

Jackson v. Indiana, 406 U.S. 715, 738 (1972)

Iowa Code § 812.8(5) (2022)

Iowa Code § 812.8(8) (2022)

Youngberg v. Romeo, 457 U.S. 307, 321 (1982)

State v. Hernandez-Lopez, 639 N.W.2d 226, 238 (Iowa 2002)

Kansas v. Hendricks, 521 U.S. 346, 356 (1997)

Oregon Advoc. Ctr. v. Mink, 322 F.3d 1101, 1121 (9th Cir. 2003)

State v. Hand, 429 P.3d 502, 505 (Wash. 2018)

Stiavetti v. Clendenin, 280 Cal. Rptr. 3d 165, 170 (Cal. Ct. App. 2021)

Iowa Code § 812.9 (2022)

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issues raised involve substantial issues of first impression in Iowa. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(c). Lukouxs Brown was found incompetent to stand trial and was committed for restoration to the Department of Corrections pursuant to Iowa Code chapter 812. After eight months, his treating psychiatrists informed the court Brown was unable to be restored. This case asks the court to resolve questions regarding whether the district court erred in postponing the hearing on the matter well beyond the statutory limit of fourteen days to allow the State to obtain a separate evaluation of Brown's competency and whether the court erred in relying on the State's evaluation over the opinion of the doctors who had been treating Brown throughout his commitment.

STATEMENT OF THE CASE

Nature of the Case: Lukouxs Brown sought, and the Iowa Supreme Court granted, interlocutory appeal challenging the district court's ruling that Brown had been restored to competency, the district court's decision to allow the State to seek a second opinion on the question of Brown's competency, and the district court's continuation of the evidentiary portion of the restoration hearing for more than 81 days beyond the deadline provided in Iowa Code § 812.8(4) (2022).

Course of Proceedings: The State charged Lukouxs Brown with first degree murder by complaint on February 16, 2021. (Complaint, Dkt. 1) (App. pp. 5-6). Counsel was appointed at the initial appearance on February 17, 2021. (Appt of Counsel, Dkt. 4) (App. pp. 7-8). Within a week, counsel requested a competency hearing, alleging Brown showed "signs of serious mental disorder" including "abnormal thought process[es], hearing voices, and responding to outside stimuli that didn't exist." (Motion for Comp. Hearing, Dkt. 9)

(App. pp. 11-12). Counsel also noted that Brown had disclosed a previous inpatient hospitalization for schizophrenia. (Motion for Comp. Hearing, Dkt. 9) (App. pp. 11-12).

A trial information was filed the next day and arraignment was set for March 17, 2021. (Trial Information, Dkt. 10; Order for Arraignment, Dkt. 12) (App. pp. 13-16). The State then agreed that a competency hearing was warranted. (State's Response, Dkt. 14) (App. pp. 17-18). The court set a preliminary competency hearing for March 3, 2021. (Order Setting Hearing, Dkt. 15) (App. pp. 19-20).

At the hearing, the State stipulated probable cause existed to believe Brown suffered "from a mental disorder which prevents him from appreciating the charge, understanding the proceedings, and assisting effectively in his defense." Specifically, the State agreed that the court should suspend proceedings and order an evaluation and that Brown "will be evaluated by whoever is the doctor or psychologist at Oakdale."

(3/3/21 Hearing Tr. 3:8 – 21) (State's Response, Dkt. 14) (App. pp. 17-18).

The court suspended the proceedings and ordered Brown be evaluated for competency pursuant to Iowa Code section 812.3 (2021) at the Forensic Psychiatric Hospital at the Iowa Medical and Classification Center in Coralville, Iowa. (Order for Evaluation, Dkt. 18) (App. pp. 21-23). On March 22, 2021, Dr. Arnold Andersen, Staff Psychiatrist at the Forensic Psychiatric Hospital, filed an evaluation report. He had interviewed Brown via teleconferencing at the Wright County Jail and concluded Brown was not competent to stand trial at that time but was a candidate for restoration treatment. (Competency Evaluation, p. 1 & 6, Dkt. 19) (Conf. App. pp. 9, 14). The court set another hearing. After the hearing, the court ordered that because Brown was not competent to stand trial, he would be committed to the custody of the Department of Corrections at the Iowa Medical and Classification Center for treatment designed to restore him to competency, pursuant to

Iowa Code sections 812.5(2) and 812.6(2)(a). (Order for Restoration of Competency, Dkt. 24) (App. pp. 24-26).

Brown was transported to IMCC for treatment on May 17, 2021. (Inmate Transfer, Dkt. 25) (App. p. 27). Reports on his treatment and progress were filed regularly thereafter. Dr. Gary Keller, Brown's treating psychiatrist, filed a 30-day report advising the court that while Brown had been at IMCC for a month, they had been unable to start treatment because of Brown's acute paranoia and aggression. He opined Brown's current diagnoses were schizophrenia and amphetamine use disorder. (30-day Report, Dkt. 26) (Conf. App. p. 15).

In August, Dr. Keller filed a 60-day progress report indicating the same diagnoses and reporting that they had begun treatment with limited progress and were starting work on restoration. He noted Brown was still having breakthrough paranoia and "odd behaviors" but that "[t]hankfully" he had not tried to assault anyone in more than thirty days. (60-day Report, Dkt. 27) (Conf. App. p. 16). An evaluation report from

Dr. Andersen was filed shortly after, indicating that after assessing Brown on August 12, Dr. Andersen did not find Brown was yet competent to stand trial but that there was "a modest possibility that in a reasonable amount of time, with additional treatment modification, he may become competent to stand trial." Dr. Andersen noted that Brown did not appreciate the charges against him, could not assist his attorneys, did not understand the key personnel in a court trial, would not be able to follow the proceedings and would be unlikely to act appropriately in court. (Evaluation Report at 7-9, Dkt. 28) (Conf. App. pp. 23-25). The court approved these reports, ordering that proceedings against Brown remain suspended and that he continue restoration treatment at IMCC. (Order, Dkt. 29) (App. pp. 28-29).

On September 2021, Dr. Andersen filed another evaluation report, describing that Brown was still suffering from hallucinations and told Dr. Anderson that "he experiences brief periods when his mind appears to be blank." (Evaluation

Report, at 4, Dkt. 30) (Conf. App. p. 29). As for efforts at restoration, Dr. Andersen said Brown knew that murder was killing someone but thought that first-degree murder was "a lot lower charge than another." He did not know if the charge was serious or not. His understanding of the role of the key participants in a trial was "vague." (Evaluation Report at 5-6, Dkt. 30) (Conf. App. pp. 30-31). Dr. Andersen concluded that because Brown did not appreciate the charge he faced, he could not effectively assist his defense attorney, did not have a rational or factual understanding of the key personnel in a court during a trial, and would not be able to follow the proceedings in a meaningful manner, Brown was not competent to stand trial, but was still a candidate for restoration. "There is a small possibility that in a reasonable amount of time, with adjustments in his medication, he may yet become competent to stand trial." (Evaluation Report at 7, Dkt. 30) (Conf. App. p. 32). The court approved the report and treatment at IMCC continued. (Order, Dkt. 31) (App. pp. 30-31).

Dr. Keller filed a 60-day report in October, indicating Brown had "stalled a bit in what progress we had seen and had some setbacks, including an assault on a peer." The staff had adjusted his care regime to address the issue. (60-day Report, Dkt. 32) (Conf. App. p. 33). He recommended that Brown continue treatment with them. (60-day Report, Dkt. 32) (Conf. App. p. 33). The court approved the report; it ordered Brown remain at IMCC and proceedings remain suspended. (Order, Dkt. 33) (App. pp. 32-33).

In November, Dr. Andersen filed another evaluation report, disclosing that Brown had substantially improved but was still not competent to stand trial. (Evaluation Report at 6, Dkt. 34) (Conf. App. p. 39). He noted Brown did not fully appreciate the charge against him but would be able to effectively assist his attorneys. Although he still did not have a rational or factual understanding of the key personnel in a court trial, he did have a partial understanding of a plea bargain. Given this improvement, Dr. Andersen now opined there was a

"moderately good possibility that with continued advancement in his medication treatments and additional teaching, he may become competent to stand trial in a reasonable amount of time." (Evaluation Report at 6, Dkt. 34) (Conf. App. p. 39). The court again approved the report and ordered Brown continue to undergo restoration treatment. (Order, Dkt. 35) (App. pp. 34-35).

In December, Dr. Keller filed a 60-day report, advising the court that "after a series of adjustments to his medications and treatment plan," they had made some progress with Brown. Despite the improvement in Brown's presentation and symptoms, he feared they had "stalled" due to Brown's impaired mental status and inability to process. However, he assured the court they were continuing to evaluate the situation and recommended Brown continue treatment. (60-day Report, Dkt. 36) (Conf. App. p. 41). The court approved the report and ordered Brown to continue treatment at IMCC. (Order, Dkt. 37) (App. pp. 36-37).

An evaluation report from Dr. Andersen filed soon after concluded Brown was still a candidate for restoration. (Evaluation Report at 4, Dkt. 39) (Conf. App. p. 45). He noted that at that point Brown was free from hallucinations and delusions, the "typical positive symptoms" of schizophrenia. However, he still suffered from the "enigmatic experience of blankness in his mind that occurs several times an hour, for a limited period of time." He believed Brown understood the charge he faced "in its essentials," was moderately able to assist in his defense, and had a generally rational and factual understanding of the key personnel in a court trial. Accordingly, he concluded "it is possible but far from certain that he may within a reasonable amount of time become competent to stand trial." (Evaluation Report at 3-4, Dkt. 39) (Conf. App. pp. 44-45).

At the same time, a neuropsychological evaluation conducted by Dr. John Bayless was filed. This evaluation assessed Brown's "underlying cognitive abilities as they related

to competence to stand trial." (Neuropsychological Eval. at 1, Dkt. 38) (Conf. App. p. 47). This report concluded Brown suffered "major neurocognitive disorder due to multiple causes . . . with behavioral disturbance." (Neuropsychological Eval. at 4, Dkt. 38) (Conf. App. p. 50). He concluded Brown's "cognitive deficits render him mentally incapable of following the progress of a trial and unable to meaningfully assist his attorney in his defense." (Neuropsychological Eval. at 5, Dkt. 38) (Conf. App. p. 51).

On February 1, 2022, Dr. Andersen filed an evaluation report opining Brown was not currently competent to stand trial and that he was no longer considered a candidate for restoration. (Evaluation Report at 1, Dkt. 40) (Conf. App. p. 53). Dr. Andersen explained that Brown denied any hallucinations. He had some insight into why he was taking medication but also asserted that he didn't have schizophrenia and that "my brain is telling me I don't need [my medications] anymore." (Evaluation Report at 4-5, Dkt. 40) (Conf. App. pp.

56-57). Dr. Andersen noted that several times during the interview, Brown appeared bewildered and Brown acknowledged he still experienced periods of what he called a "blank mind." (Evaluation Report at 4-5, Dkt. 40) (Conf. App. pp. 56-57). Brown also told Dr. Andersen that he was thinking about getting a transfer to Oregon. (Evaluation Report at 5, Dkt. 40) (Conf. App. p. 57).

Brown knew what murder was but thought first-degree murder was the "most minor" form of murder. He didn't know what options a person had when asked how to plead. He understood that the prosecutor and defense attorney "make opposing statements" but had no understanding of the concept that a person is innocent until proven guilty. He explained that the role of his attorney would be "to keep on good spools"[1] or to "keep me in good heights." He believed the prosecutor was working against him but thought it would okay to meet with the prosecutor in private because "it's usually better to have a

[1] When asked what "spools" referred to, Brown told Dr. Andersen that he didn't know—it was just a word he made up.

private meeting and unpack it." He understood the judge was neutral but thought the judge decided the sentence for guilty people. (Evaluation Report at 6-7, Dkt. 40) (Conf. App. pp. 58-59). Dr. Andersen's conclusion that Brown could not be restored was based on the fact that while Brown had significantly improved his positive symptoms of schizophrenia, his negative symptoms, such as "intermittent blank mind, flat affect, and inability to find any words or phrases to answer many questions," were unresolved. He concluded Brown "has shown no capacity for new learning," despite the repeated attempts at educating him on key aspects of the court system. Dr. Andersen indicated there were "no further psychopharmacological treatments" that could be offered to Brown. (Evaluation Report at 7, Dkt. 40) (Conf. App. p. 59). Brown was transferred from IMCC to the Wright County Jail on February 2, 2022. (Inmate Transport, Dkt. 41) (App. p. 38).

Brown moved for a hearing pursuant to Iowa Code section 812.8(4) within fourteen days of the filing of Dr. Andersen's

report finding Brown could not be restored to competency. (Motion for Hearing, Dkt. 42) (App. pp. 39-40). The same day the State filed a request for additional time to find its own expert to evaluate Brown to assess his competency to stand trial. (Motion, Dkt. 43) (App. pp. 41-42). Brown resisted. (Resistance, Dkt. 44) (App. pp. 43-45). Hearing was set for February 11, 2022. (Order Setting Hearing, Dkt. 45) (App. pp. 46-47).

At the hearing, the parties disputed the court's authority to allow the State to obtain a second opinion on Brown's competency and to grant the State time to find another expert outside the 14-day limit provided in Iowa Code section 814.8(4). (2/11/22 Hearing Tr. 3:16 – 21:4). The court agreed with the State and granted the State's request to find another expert and continued the proceedings for a "brief period of time" without setting a deadline. (2/11/22 Hearing Tr. 21:8 – 23:8) (Order, Dkt. 46) (App. pp. 48-49).

A month later, Brown filed a motion to dismiss. Brown noted in his filing that had been 43 days since Dr. Andersen's report was filed and 32 days since the initial "hearing" was held in which the court gave the State additional time to find an expert. (Motion to Dismiss, Dkt. 48) (App. pp. 50-51). Brown argued Iowa Code section 812.8(4) required a hearing within fourteen days and moved to dismiss the prosecution with prejudice due to the failure to hold a meaningful hearing within the prescribed timeframe. (Motion to Dismiss, Dkt. 48) (App. pp. 50-51). The State resisted and informed the court that it had received a report from its expert. (Resistance, Dkt. 49) (App. pp. 52-53). The court denied the motion to dismiss and ordered a competency hearing to be scheduled. (Order, Dkt. 50) (App. pp. 54-55). The competency hearing was set for May 6, 2022. (Hearing Notice, Dkt. 52) (App. p. 56).

At the hearing, the State presented the testimony and report of Dr. Rosanna Jones-Thurman. (5/6/22 Hearing Tr. 7:22 – 55:21) (State's Ex. 1, Dkt. 62) (Conf. App. pp. 62-78).

Dr. Jones-Thurman testified that, after interviewing Brown for roughly 90 minutes on February 19, 2022, and reviewing the records provided by the State, she concluded Brown was competent to stand trial. (5/6/22 Hearing 13:8-15:6). During her interview with Brown, he denied having any hallucinations or that he had any problems with attention, concentration or focus. He told her that he thought he used to hear things, but "I don't remember." He told her that he took his medications and sometimes had memory problems. He was able to tell her that he was charged with first-degree murder and was at the Wright County Jail. He understood that his attorney was there to help him "against the order of the court." He thought the judge was supposed to be neutral and "blends the story and puts it back together, and comes up with the best solution and motion of the court." However, he didn't remember what the jury did and "thought they might be like court jesters." (State's Ex. 1 at 4-5, Dkt. 62) (Conf. App. pp. 65-66).

Brown presented testimony from Drs. Andersen and Bayless to support their conclusions that Brown was not competent and could not be restored. (5/6/22 Hearing Tr. 56:20 – 88:23; 89:8 – 126:4). Brown's sister also testified, recounting conversations she had with Brown since he'd been transferred back to jail. She testified she'd noticed a decline in his cognitive function and he had been talking to her about his expectation he would soon be released and his plan to visit family on the west coast. She felt her conversation with him indicated he didn't understand the proceedings against him. She also testified she believed he was experiencing delusions or hallucinations because he told her he was communicating with the CIA through his mind. (5/6/22 Hearing Tr. 126:21 – 130:3). Brown submitted an audio recording of a call on April 1, 2022, from Brown to his sister, supporting her testimony. (Def. Ex. D).

The court concluded the preponderance of the evidence indicated Brown had been restored to competency. (Order

Setting Arraignment, at 18, Dkt. 68) (App. pp. 75). The court reinstated proceedings and set a date for arraignment. (Order Setting Arraignment, at 18, Dkt. 68) (App. pp. 75).

Brown entered a written arraignment, pleading not guilty and demanding a speedy trial. (Arraignment Order, Dkt. 72) (App. pp. 76-77). Brown then filed an application for interlocutory appeal. (Application, Dkt. 75). The Iowa Supreme Court granted the application and stayed the district court proceedings. (Supreme Court Order, Dkt. 78).

Facts: Lukouxs Brown is accused of murdering his coworker, Wayne Smith, at the Prestage pork processing plant near Eagle Grove, Iowa, by cutting his throat with a knife. (Trial Information, Dkt. 10) (App. pp. 13-14); (Minutes, p. 1, Dkt. 11) (Conf. App. p. 4).

ARGUMENT

I. Because the preponderance of the evidence established Brown was not competent and could not 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. Error Preservation. Brown's competency was the subject of a contested hearing. The district court ruled Brown had been restored to competency, and Brown sought interlocutory appeal on the issue. (Order Setting Arraignment, Dkt. 68) (App. pp. 57-75); (Application, Dkt. 75). Error has been preserved. Lamasters v. State, 821 N.W.2d 856, 862 (Iowa 2012) (issues raised and decided by the district court are preserved for consideration on appeal).

B. Standard of Review. Because the determination of a defendant's competence to stand trial implicates his constitutional rights to due process, the appellate court will review the issue de novo. State v. Johnson, 784 N.W.2d 192, 194 (Iowa 2010). See also State v. Veal, 930 N.W.2d 319, 327 (Iowa 2019).

C. Discussion: "[T]he criminal trial of an incompetent defendant violates due process." Cooper v. Oklahoma, 517 U.S. 348, 354 (1996), quoting Medina v. California, 505 U.S. 437, 453 (1992). See also State v. Lyman, 776 N.W.2d 865,

871 (Iowa 2010), overruled on other grounds by Alcala v. Marriott Int'l, Inc., 880 N.W.2d 699, 708, n.3 (Iowa 2016).

Under the Sixth and Fourteenth Amendments to the United States Constitution, the test for competence to stand trial 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 rational as well as factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402, 402 (1960) (per curium); Cooper, 517 U.S. at 350, 354. See also State v. Einfeldt, 914 N.W.2d 773, 778–79 (Iowa 2018). Iowa Code chapter 812 implements federal constitutional protections for incompetent defendants. Einfeldt, 914 N.W.2d at 779. Under the Iowa Code, the determination of competency turns on whether "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 (2022).

In this case, the district court had concluded Brown was incompetent to stand trial in April 2021. Brown had been receiving treatment at IMCC since May 2021. On February 1, 2022, Dr. Andersen, who had been working with Brown and conducted five evaluations of Brown during this timeframe, filed a report indicating Brown could not be restored to competency. (Evaluation Report at 1, Dkt. 40) (Conf. App. p. 53). This filing triggered the court's duty to hold a hearing pursuant to Iowa Code section 812.8(4). See Iowa Code § 812.8(3) (2022). Under the Code, two options were reasonably available to the court after the hearing: either continue treatment or terminate Brown's commitment. Iowa Code § 812.8(6), (8) (2022).

If the court concluded a preponderance of the evidence showed Brown remained incompetent but was making progress toward competency, the court could continue the placement at IMCC for further treatment. Iowa Code § 812.8(6) (2022). And if a preponderance of the evidence demonstrated there was not a substantial probability that Brown could be restored to

competence within a reasonable amount of time, the court should terminate the commitment. Iowa Code § 812.8(8) (2022). At that point, the State would be free to commence civil commitment proceedings as it deemed appropriate.[2] Iowa Code §§ 812.8(8); 812.9(3) (2022).

However, in this case, because the court allowed the State to obtain an expert who opined that Brown was competent, the court utilized a third option—finding Brown was competent and reinstating criminal proceedings against him. Iowa Code § 812.8(5) (2022). (Order Setting Arraignment, Dkt. 68) (App. pp. 75). Because the preponderance of the evidence established Brown was incompetent and there is no substantial probability that his competence can be restored in a reasonable amount of time, the district court erred in concluding otherwise.

[2] If the State seeks to have Brown committed, and at any time in the future Brown does regain competency, the State may apply to have the prosecution against him reinstated and the court will hold another hearing as described in section 812.8(4). See Iowa Code § 812.9(4) (2022).

The preponderance of the evidence established that Brown had not been restored to competence and there is not a substantial probability that Brown's competency can be restored within a reasonable time. The evidence at the hearing consisted of the CV's and testimony of three doctors, as well as testimony from Brown's sister. Brown also submitted a recording of phone call he had with his sister from the Wright County Jail and other jail phone records. (Def. Ex. D) (Def. Ex. C, Dkt. 65) (Conf. App. pp. 79-80). The parties also submitted a stipulation that Brown's medication had been reduced while he was in the Wright County Jail. (Stipulation, Dkt. 67) (Conf. App. p. 81). The court took judicial notice of all the reports filed during Brown's placement at IMCC for restoration. (5/6/22 Hearing Tr. 4:17 – 7:15).

The preponderance of the evidence established Brown had not been restored to competence and cannot be restored within a reasonable timeframe. The testimony of Drs. Andersen and Bayless, along with Brown's sister's conversations with Brown,

demonstrated that despite extensive treatment, Brown is still suffering from a mental disorder which prevents him from appreciating the charge against him, understanding the proceedings, or assisting effectively in his defense, and that there is not a substantial likelihood he can be restored with further treatment. See Iowa Code § 814.3 (2022). See also Einfeldt, 914 N.W.2d at 779.

Dr. John Bayless, a board-certified neuropsychologist who maintains a private practice in Madison, Wisconsin, and emeritus professor at The University of Iowa Medical School, consults with the IMCC when needed. (5/6/22 Hearing 57:21 – 58:11). He explained neuropsychology is the use of psychological tests and interviews to determine the cognitive effects of known or suspected defects in mental status. He noted that he had twenty to twenty-five articles published in peer-reviewed journals. (5/6/22 Hearing 70:3 – 71:6). He testified that, at Dr. Andersen's request, he conducted formal neuropsychological testing to assess Brown's cognitive abilities,

such as reasoning, memory, language, motivation, and executive functioning. (5/6/22 Hearing 59:6–4). Before he met with Brown at IMCC for about three and a half hours, he also reviewed arrest records, jail records, and the previous evaluations that had been done. He interviewed Brown about his perceived history and then performed various neuropsychological tests. (5/6/22 Hearing 60:10 – 62:2).

Dr. Bayless testified he conducted the Weschler Adult Intelligence Test which assesses verbal and visual reasoning, attention, and motor speed. The tests he administered showed Brown's verbal intellectual functioning was in the 4th percentile, his visual reasoning skills were below the 1st percentile, and attention span was below the 1st percentile. These scores were all in the "impaired" range. Dr. Bayless noted that Brown's reading and spelling skills were in the average range, indicating that his intellect used to be in the average range, but that he'd suffered a serious decline likely due to his mental illness. (5/6/22 Hearing 62:3 – 64:10).

On the Repeatable Battery for the Assessment of Neuropsychological Status (RBANS), Brown scored below the 1st percentile for immediate memory, demonstrating significant impairment. His attention score was also well below the 1st percentile. His delayed memory subscores ranged from 3rd to the 9th percentile, also in the impaired range. (5/6/22 Hearing 65:20 – 67:10).

Dr. Bayless recounted conducting a memory test on Brown in which he read a series of paragraphs to Brown and asked him to remember as many details as he could about the story. He found Brown's performance to be in the 2nd percentile on initial memory and 1st percentile on delayed memory. He found it particularly concerning that not only did Brown "fail to remember a significant amount, he also introduced details that had not been present in those stories." (5/6/22 Hearing 85:13 - 86:19).

Dr. Bayless described his overall impression of Brown:

> He has defective scores in immediate memory. He had -- . . . -- he had mild defects in his reading,

> moderate defects in his immediate memory, both verbal and nonverbal, mild to moderate defects in his delayed memory, severe defects in what are called executive functioning. And taken as a whole, if an individual had come to me who was having late-life dementia on the basis of these scores, I would diagnose him as having moderate dementia.

(5/6/22 Hearing 67:11 - 68:3). He explained that Brown's significant impairment in his executive functioning impacts his ability to generate ideas and shift his approach as the situation changes. (5/6/22 Hearing 68:4 – 70:2).

Dr. Bayless testified that based on his review of the records as well as his own testing, Brown's "cognitive deficits render him mentally incapable of following the progress of trial and unable to meaningfully assist his attorney as a result." (5/6/22 Hearing 75:10 – 76:9). He also asserted Brown cannot reasonably be restored to competence. He explained that while he recognized that schizoaffective disorder and cognitive disorders can fluctuate, his opinion that Brown cannot be restored was based on the fact that at the time he had evaluated Brown in December 2021, Brown had been receiving intensive and aggressive psychiatric treatment from both Dr. Andersen

and Dr. Keller. Despite their efforts and the vast improvement, they achieved in Brown's condition, when he evaluated Brown his cognitive abilities were still "greatly impaired." (5/6/22 Hearing 83:4 - 85:3).

Dr. Arnold Andersen was part of the interdisciplinary team that worked with Brown during his time at IMCC. (5/6/22 Hearing Tr. 95:17 – 98:7). Dr. Andersen had been employed jointly by The University of Iowa and the Forensic Psychiatric Hospital at the Iowa Medical Classification Center for about seven years. His primary role as a forensic psychiatrist is to make determinations about whether people were competent to stand trial or have been restored to competency after treatment. As an emeritus professor at The University of Iowa, he diagnoses and treats all psychiatric conditions, teaches students and conducts research. He has over a hundred peer-reviewed publications and is board-certified by both the Board of Psychiatry and Neurology. (5/6/22 Hearing 89:15 – 92:16). He explained the Forensic Psychiatric Hospital is a fourteen-bed

unit devoted to diagnosis and treatment of mental disorders for people accused of or convicted of crimes in Iowa. He estimated that 75-80% of their patients become competent within an average time of 50-60 days, although the length of treatment will vary from a matter of days up to nine months. (5/6/22 Hearing 92:17 – 95:16).

He testified he and Dr. Keller worked together to restore Brown to competency, trying various combinations of medications and finally, when Brown seemed to have stalled out in his progress, turning to Clozapine as a last resort because of its high risk of side effects. After incorporating the Clozapine with other mood stabilizers and antipsychotics, Dr. Keller concluded Brown was "maximally treated." (5/6/22 Hearing 95:17 – 96:21).

Dr. Andersen described the process used to educate Brown about the legal system. A social worker interviewed Brown to identify his level of knowledge about the court and procedure, to identify the areas where he was deficient, and to

determine how they could help Brown learn what he needed to know to become competent. They realized, though, over the months that Brown had "considerable difficulty in incorporating new information." As was common in difficult cases, particularly in cases where there seemed to be an intersection of neuropsychological issues with psychiatric issues, he enlisted the help of Dr. Bayless to evaluate Brown to create a more complete understanding of his neuropsychological functioning and whether there was more they could do to help him learn. After Dr. Bayless conducted his evaluation, they consulted and found they agreed that Brown had not yet attained competence to stand trial. (5/6/22 hearing 96:24 - 99:22). Dr. Andersen concluded that, considering his consultations with the various team members who had been working with Brown in the eight months since his arrival at IMCC, his review of the records, a consideration of the medications he had been prescribed, as of his last evaluation on January 24, 2022, Brown "was not competent to stand trial,

and additionally, would not benefit from additional restoration treatment." (5/6/22 Hearing 99:23 – 100:21).

Dr. Andersen acknowledged Brown had a basic understanding that he was charged with murder and that it is a serious charge. However, his real concern about competency related to Brown's ability to follow the proceedings and assist in his defense in a meaningful manner. He noted the "periods of blankness" that he often observed in Brown and how he talks "non-sensibly using made up words." (5/6/22 Hearing 113:3 – 115:23).

Dr. Andersen vehemently denied that his conclusion that Brown could not be restored was "a facility issue," that he wanted to open up more beds. "If we thought there was any possibility in our clinical experience over a few decades, we would have kept him. . . I don't care who likes it or doesn't like it, we'll keep anybody when we have some reasonable clinical background to suggest they would improve. . . We never make

decisions based on bed space." (5/6/22 Hearing 119:2 – 121:21).

Brown's sister testified that based on conversations with Brown since he'd been transferred to the Wright County Jail, she thought his cognitive function had decreased and he was delusional. He had been asking her to contact people she didn't think he had ever met, making plans for when he got out of jail, and making statements about using the mafia or the cartel to contact people outside of jail. (5/6/22 Hearing 126:23 – 130:3).

Brown introduced a recording of a phone call he made from jail to his sister on April 1, 2022. (Def. Ex. D).[3] In the phone call, Brown begins the conversation by telling his sister that he's been communicating with an old high school friend, Mike, in Oregon, via the CIA, which was "given" to him when he

[3] The quality and volume of the audio on the recording varies drastically between Brown's voice and his sister's. By listening to the recording with headphones rather than the computer speakers, the audio quality is significantly improved and Brown's side of the discussion is clearly audible.

got to jail. "Mike" had suggested Brown should attend culinary school when he got out of jail. "Mike" proposed Brown live with his girlfriend in Oregon until he completed community college, then transfer to a Florida culinary school with "Mike." When his sister questioned his reference to the CIA, he explained that it was "something to do with your head" and it was why so many inmates walk back and forth so much. The CIA gave them something to think about instead of being bored in their cells and "going crazy." He clarified that the CIA did not come talk to him, but that it was "just in my head" as a way he could connect with people outside of the jail. He told her he'd been walking back and forth in his cell, talking to his old friend "Mike" through the CIA, which is like the cartel, in that "they stay connected to everything." (Def. Ex. D at 0:21 – 1:02; 1:53 – 2:20; 3:04 – 4:35).

Brown's sister mentioned that she had been sleeping because "this baby has been kicking my ass." (Def. Ex. D 0:00 – 0:16). The conversation focused on his sister's pregnancy

and how she wasn't feeling well because of it. Brown explicitly clarified that his sister was pregnant. He also talked to his brother-in-law about his sister's pregnancy and how she wasn't feeling well. (Def. Ex. D at 2:24 – 3:04; 5:42 – 6:03). After about five minutes, when his brother-in-law transferred the phone back to his sister and she commented that she had finally got out of bed, Brown was surprised and asked if she wasn't feeling well. (Def. Ex. D at 10:56 – 11:12).

He also told his brother-in-law about his plans for when he got out of jail: "I'm probably going to go back to Oregon to get my GED and then I'm going to go through a culinary arts program," to "start cooking" and "be a chef." (Def. Ex. D at 6:10 – 6:30). When his brother-in-law asked him how he was feeling, Brown told him he was feeling good but he didn't know when he was getting out because he hadn't talked to his lawyer yet. He described meeting with a nurse a few weeks back who "gave me a roundabout of my background and wanted to check and make sure everything was copacetic," and she was "just

checking in to make sure everything was okay with me."[4] (Def. Ex. D at 6:48 -7:28). Brown described how he had been growing a beard since he'd been in jail and that he was just going to let it grow until he got out of jail. (Def. Ex. D at 8:30 – 9:11).

A review of this evidence clearly demonstrates Brown is not competent and there is not a substantial probability that Brown can be restored to competence within a reasonable amount of time. The testimony from State's expert, Dr. Rosanna Jones-Thurman, does not undermine the evidence provided by Brown's witnesses and the phone call which demonstrated Brown's cognitive deficiencies as well as his active symptoms of schizophrenia. Dr. Jones-Thurman's evaluation of Brown does not establish his competency as

[4] Given that he describes the "nurse" being interested in his background, this comment raises a suspicion that the "nurse" Brown is referring to is actually the State's expert, Dr. Jones-Thurman. According to the parties' stipulation, Brown had been receiving medical care in jail from a male psychiatrist via telehealth services. (Stipulation, Dkt. 67) (Conf. App. p. 81).

neither her expertise and experience match that of Drs. Bayless and Andersen, nor was her brief interview with Brown sufficient to outweigh Dr. Andersen's eight-month inpatient relationship with Brown.

Dr. Jones-Thurman is a psychologist who, in her private practice, conducts "a variety of evaluations for children, adults, forensic, Social Security disability, things like that." A fourth to a fifth of her practice involves ongoing treatment and practice, although she is not currently treating anyone who is diagnosed with schizophrenia. She is licensed in both Iowa and Nebraska. However, Dr. Jones-Thurman is not board-certified in any particular specialty, nor has she authored any publications in peer-reviewed publications. (5/6/22 Hearing 8:11 – 12:8; 44:1-11; 47:5-10).

Unlike Drs. Andersen and Bayless, who "have no skin in the game" and were not hired by either party but instead are paid by the Department of Corrections and treated Brown by court order, Dr. Jones-Thurman was hired by the State "to see

him and perform a psychological evaluation on him as well as review[] records and make a determination about his competency for trial." She was paid for her evaluation and her testimony, $500 an hour for testimony, $200 for her preparation for trial, and $175/hour for travel time. She estimated that her fees up to the point of her testimony was approximately $4000-$5000. (5/6/22 Hearing 12:8-16; 42:20 - 43:13; 59:6-16; 87:21 – 88:16; 115:6-16).

She met with Brown at the Wright County Jail on February 19, 2022, and spent about 90 minutes with him. (5/6/22 Hearing 12:8- 14:2). She explained to Brown why she was there, went through his background with him, including his family, employment and educational history as well as his medical and mental health history. After that, she conducted a mental status evaluation and the verbal portion of the Wechsler IQ test. (5/6/22 Tr. 15:7 – 17:15). His verbal score on the IQ test was a 78 which put him in the "borderline" category, the lowest category. The "verbal" score analyzes "how

the person is understanding things, verbalizing things, articulating things, understanding abstract reasoning as well as basic common sense and information." (5/6/22 Tr. 19:3 – 20:2). Dr. Jones-Thurman only utilized the verbal portion of the Wechsler IQ test. She "didn't do processing speed. I didn't do perceptual reasoning. I didn't do working memory." She noted that she found Brown to have scored four points higher on the verbal portion compared with his score when Dr. Bayless performed the same test. However, she acknowledged that on any given day, a person's score can vary by five points. (5/6/22 Hearing 39:13 – 41:25). She did not use any other tests to assess Brown, such as the RBANS, the Wechsler Memory Test, the Benton Visual Retention Test, the Controlled Word Association, or a Trail Making Test. (5/6/22 Hearing 41:1-24).

The mental status evaluation involved asking Brown if he knew the date, could identify the President and past President, to perform some arithmetic and abstract reasoning and to

repeat a series of digits from memory. Brown was not sure of the date, but he did know where he was. He was able to repeat six digits forward and three backward. He could count backwards by sevens and spell the word "world" forward and backward. He had difficulty with some of the arithmetic problems. (5/6/22 Hearing 21:8 – 22:13).

She also talked to him about his charges. He told her he was in jail because he had killed someone recently and was charged with first degree murder. (5/6/22 Hearing 22:14 – 23:16). She diagnosed him with Bipolar II disorder, schizophrenia, anti-social personality disorder, and numerous substance abuse issues in remission. (5/6/22 Hearing 23:17 – 24:6). She ultimately concluded that while Brown suffered from a mental disorder, it did not prevent him from appreciating the charge against him because he "understands the term murder and that he killed someone. He knows who he killed." (5/6/22 Hearing 25:20 – 26:19). However, she agreed that she did not question Brown about the intricacies of the legal charge,

such as the concept of premeditation, or the various defenses that might be raised when facing a first-degree murder charge, or the differences between someone being found incompetent to stand trial and someone being found not guilty by reason of insanity. Instead she noted she talked to him about whether "he felt he could talk to his attorney." He told her he "felt like he could help his attorney and give him information." (5/6/22 Hearing 33:30 – 36:7).

She concluded he understands the proceedings against him and the various people involved in the court process. She testified he understood there were different sentences depending on what degree of murder he might be convicted of. He told her he wanted to be transferred back to Oregon or maybe go to Cherokee Mental Health as an option. She thought he understood that he was facing a long sentence if he was convicted. (5/6/22 Hearing 26:20 – 28:9). She testified that she believed his mental disorder did not prevent him from effectively assisting in his defense because he could

communicate appropriately with his attorneys. Specifically she noted that "he has a reasonable vocabulary, his conversational speech is . . . better than what's noted in the IQ testing. . . . He seems to know who his attorney is and be – able to articulate his medications and his diagnosis, his past history." She testified that he "seems well aware that the prosecutor is not necessarily there to aid him or help him." She testified he was able to able to articulate the role of the judge and jury. (5/6/22 Hearing 28:10 - 30:8). She acknowledged she did not ask Brown whether he understood what a bench trial was or how it differed from a jury trial. (5/6/22 Hearing 33:9-15).

As described above, Dr. Jones-Thurman's conclusion that Brown is competent to stand trial was based on Brown's superficial understanding of the proceedings and on his own claim that he could help his attorneys. Further, it was undermined by her own report. While she testified that Brown understood the role of the judge and jury, in her report, she

noted that Brown described the role of the judge and jury as follows:

> He reports that he knows that the judge is supposed to remain neutral, and blends the story and put it back together, and comes up with the best solution and motion of the court. He reports that he can't remember what the jury does and doesn't know exactly, but they might be like court jesters.

(State's Ex. 1, p. 4. Dkt. 62) (Conf. App. p. 65). (5/6/22 Hearing 30:17 – 33:12).

The phone call from April 1st supported the conclusions of Drs. Andersen and Bayless and undermined the opinion of Dr. Jones-Thurman. The substance of the phone call demonstrated Brown's regression since his transfer to jail and showed he was displaying the positive symptoms of schizophrenia. He believed he was communicating with his friends via the CIA—something "in his head," given to him at the jail, that allowed him to stay connected to others with his mind. He also talked repeatedly about getting out, making plans to attend community college and then culinary school, demonstrating he does not understand the severity of the

charges against him or the effect of a finding of unrestorable incompetency. As well, his plans to attend culinary school illustrate his disconnect to reality; under the circumstances, even if he were released, it is doubtful that he would be allowed access to knives, given the circumstances of the offense.

And lastly, the conversation demonstrated the cognitive deficiencies that concerned Drs. Bayless and Andersen. After only a few minutes, Brown was unable to remember that his sister was sick, despite an extensive discussion of her pregnancy-related illness. And given that he was apparently being treated via telemedicine by a male psychologist, his reference to a female "nurse" who visited him to check his background was likely his recollection of the interview by Dr. Jones-Thurman. This would demonstrate he did not understand the purpose of her visit, despite his apparent ability to convince her not only that he understood their discussion but was competent to stand trial.

D. Conclusion. Because a preponderance of the evidence showed that Brown was not competent to stand trial because he was suffering from a mental disorder which prevents him from appreciating the charges against him, understanding the proceedings, or assisting effectively in his defense, the district court erred in concluding Brown was competent. Further the preponderance of the evidence established that there is not a substantial likelihood that Brown can be restored within a reasonable amount of time, and the district court should have terminated the commitment, allowing the State to commence civil commitment proceedings if it wanted. See Iowa Code § 812.8(8); 812.9(3) (2022). The district court's order reinstating proceeding against Brown should be vacated and his case remanded with directions to terminate Brown's commitment pursuant to Iowa Code section 812.8(8).

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.

A. Error Preservation. Dr. Andersen notified the court that Brown could not be restored to competency on February 1, 2022, and Brown moved for a hearing pursuant to Iowa Code section 812.8(4) (2022). (Motion for Hearing, Dkt. 42) (App. pp. 39-40). The same day the State filed a request for additional time to find its own expert to evaluate Brown to assess his competency to stand trial. (Motion, Dkt. 43) (App. pp. 41-42). Brown resisted. (Resistance, Dkt. 44) (App. pp. 43-45).

At the hearing held on February 11, 2022, Brown continued to resist the State's request for additional time to hire an expert. (2/11/22 Hearing Tr. 3:16 – 21:4). The court granted the State's request. (2/11/22 Hearing Tr. 21:8 – 23:8) (Order, Dkt. 46) (App. pp. 48-49). Brown then sought discretionary review, raising this issue. (Application, Dkt. 75). Because Brown's objection was made promptly and he continued to object, error has been preserved. See State v. Brothern, 832 N.W.2d 187, 191 (Iowa 2013) (to preserve error objections should be made at the earliest opportunity after the

grounds become apparent.). See also Lamasters v. State, 821 N.W.2d 856, 862 (Iowa 2012) (issues raised and decided by the district court are preserved for consideration on appeal).

B. Standard of Review. Matters of statutory interpretation are reviewed for corrections of errors at law. State v. Childs, 898 N.W.2d 177, 181 (Iowa 2017).

C. Discussion. When Brown moved for a competency hearing shortly after counsel was appointed, the State agreed that probable cause had been established to warrant a competency evaluation. (State's Response, p. 1, Dkt. 14) (App. p. 17); (3/3/21 Hearing Tr. 3:8-11). The State further agreed that the court should suspend proceedings pursuant to Chapter 812.3 and that Brown should be evaluated by "the doctor or psychologist at Oakdale." (3/3/21 Hearing Tr. 3:12 – 18); (State's Response, p. 2, Dkt. 14) (App. pp. 17-18). The court suspended the proceedings and ordered Brown be evaluated for competency pursuant to Iowa Code § 812.3 (2022). (Order for Evaluation, Dkt. 18) (App. pp. 21-23). Dr. Arnold Andersen,

Staff Psychiatrist at the Forensic Psychiatric Hospital at IMCC, interviewed Brown and filed his report on March 22, 2021, concluding Brown was not competent to stand trial but was a candidate for restoration. (Competency Evaluation at p. 1 & 6, Dkt. 19) (Conf. App. pp. 9, 14).

At the follow-up hearing, the State agreed that Brown should be transported to IMCC for restoration treatment. The State, in fact, drafted the proposed order. Despite having earlier sought to preserve the right to conduct an evaluation of Brown by an expert of its own choosing "if that becomes necessary," the State did indicate any disagreement with Dr. Andersen's findings. Iowa Code § 812.3(2) (2022). (State's Response, p. 2, Dkt. No. 14) (App. p. 18). Instead, the State acknowledged that "we don't have any other report or opinion that would indicate that Mr. Brown is currently competent to stand trial." (4/16/21 Hearing Tr. 3:10 – 4:4).

The court agreed and entered the order requiring Brown be committed to the custody of the director of the Department

of Corrections at IMCC for restoration treatment pursuant to Iowa Code §§ 812.5(2) and 812.6(2)(a) because he posed a threat to public safety and was not subject to pretrial release. (1/16/21 Hearing Tr. 5:20 – 6:5) (Order for Restoration, Dkt. 24) (App. pp. 24-26).

Brown was transported, and the doctors at IMCC filed timely reports as required by Iowa Code section 812.7, always concluding Brown was incompetent and always expressing cautious optimism about the chances of Brown's restoration. Over the course of Brown's first six months of treatment, the reports from Dr. Andersen described his chances of restoration as a "modest possibility," a "small possibility," a "moderately good possibility," and "possible but far from certain." (Evaluation Report at 7-9, Dkt. 28; Evaluation Report at 7, Dkt. 30; Evaluation Report at 6, Dkt. 34; Evaluation Report at 3-4, Dkt. 39) (Conf. App. pp. 23-25, 32, 39, 44-45). Despite these pessimistic predictions, the State never challenged the findings

of Dr. Andersen or Dr. Keller, nor did they seek the opportunity to obtain another opinion.

It was not until Dr. Andersen concluded Brown could not be restored within a reasonable amount of time, and after Brown requested the court set a hearing within the mandatory 14-day deadline, that the State asked to get a second opinion. Chapter 812, however, does not authorize the acquisition of a second opinion at this late stage of the proceedings.

Although under Iowa Code section 812.3, "[a]ny party is entitled to a separate psychiatric evaluation by a psychiatrist or licensed, doctorate-level psychologist of their own choosing," this authorization does not apply to the later stages of incompetency proceedings. A review of the scheme provided by chapter 812 demonstrates why.

Section 812.3 addresses the initial allegation that a defendant is not competent to stand trial. See Iowa Code § 812.3. If probable cause exists, the court must suspend the criminal proceedings and order the defendant to undergo a

psychiatric evaluation. Iowa Code § 812.3(2). At this stage, "any party" is given the right to seek a separate psychiatric evaluation of the defendant. Iowa Code § 812.3(2). A hearing on the defendant's competency must be held within fourteen days after the defendant has arrived at a psychiatric facility for the evaluation. Iowa Code § 812.4. If the court finds the defendant is competent, proceedings shall be reinstated, but if the court finds the defendant is not competent, the court must suspend the proceedings indefinitely and "order the defendant to be placed in a *treatment* program pursuant to section 812.6." Iowa Code § 812.5(2) (emphasis added).

At this point, the focus shifts from the evaluation of the defendant to the treatment of the defendant. After the initial finding of incompetency is made, there is no provision for independent evaluations of a defendant who is not competent and poses a risk to the public. See Iowa Code §§ 812.6; 812.7; 812.8; 812.9. And once the court receives a report that the defendant either has been restored or cannot be restored, the

required restoration hearing does not accommodate opinions from outside experts, rather the pertinent opinions are those of the treating physicians. The independent evaluation guaranteed in section 812.3(2) has no relevance.

Once the district court determines a defendant is not competent to stand trial, the proceedings become less adversarial. The court's options once a defendant has been found incompetent are limited, and they are even more limited when the defendant presents a risk to the public. At this point, the court is tasked with overseeing the care of a mentally ill person, not supervising an adversarial trial process. This is demonstrated by the requirement of periodic reports from the defendant's treating physicians. See Iowa Code § 812.7.

The court's only option, after finding the defendant is incompetent and is a danger to the public, as in Brown's case, is to commit the defendant "to the custody of the director the department of corrections at the Iowa medical and classification center, or other appropriate treatment facility as designated by

the director, for treatment designed to restore the defendant to competency." Iowa Code § 812.6(2)(a). The statute leaves no discretion at this point and if either party sought to have the defendant treated elsewhere, they would be denied.

As Chapter 812 is structured, the doctors at IMCC are not on the side of either party—they are professionals tasked by the legislature and the court to provide treatment for a dangerous and mentally ill defendant. Once the treating psychiatrist or psychologist determines that the defendant has either been restored to competence or cannot be restored, the court is required to hold a hearing within fourteen days. Iowa Code § 812.8(4). The short time frame for the hearing is justified by the due process concerns about the confinement of unconvicted persons are at play.[5] Logistically, the short turnaround for the hearing can be accommodated because the only opinion that is relevant to the court's determination is that of the treating physicians. As demonstrated by the proceedings in this case,

[5] At this point, the State may choose to commence civil commitment proceedings. See Iowa Code § 812.9(4).

a fourteen-day turnaround cannot be accomplished if parties are allowed to seek outside opinions on the defendant's competency or restorability at this late juncture.

D. Conclusion. Because chapter 812 does not authorize a party to obtain an outside expert evaluation of the defendant who has been committed at IMCC pursuant to section 812.6(2)(a) once the treating medical staff and determined he is not able to be restored to competency, the district court erred by allowing the State to do so. The opinion of the State's expert should not be considered when determining whether Brown has been restored to competency or can reasonably be restored to competency. Because the rest of the evidence submitted at the hearing overwhelmingly demonstrated Brown could not be restored, the district court's order reinstating proceeding against Brown should be vacated and his case remanded with directions to terminate Brown's commitment pursuant to Iowa Code section 812.8(8).

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.

A. Error Preservation. After Dr. Andersen filed his report indicating Brown could not be restored to competency, Brown filed a motion requesting the court hold a hearing within 14 days as required by Iowa Code § 812.8(4). A hearing was held on February 11, 2022, but the substantive issue of Brown's competence or ability to be restored was not addressed. Instead the court continued the hearing indefinitely to allow the State to hire an expert to evaluate Brown and provide a second opinion. (Motion, Dkt. 43) (App. pp. 41-42). Brown resisted the continuance, arguing the statute required the substantive hearing to be held within the 14-day timeframe. (Resistance, Dkt. 44) (App. pp. 43-45). (2/11/22 Hearing 10:22 – 18:19). He also argued that the delay—holding him in jail indefinitely violated his due process rights. (2/11/22 Hearing 16:15 – 17:19). The court denied Brown's argument. (2/11/22 Hearing 21:8 – 23:8) (Order, Dkt. 46) (App. pp. 48-49).

After a month had passed with no further action taken on the record by either the State or the court, Brown filed a motion to dismiss. (Motion to Dismiss, Dkt. 48) (App. pp. 50-51). Within a matter of hours, the State filed a resistance indicating it now had a report from its expert and had shared the report with defense counsel that day via email. (Resistance, Dkt. 49) (App. pp. 52-53). The court denied the motion. (Order, Dkt. 50) (App. pp. 54-55). The hearing was eventually held on May 6, 2022, 94 days after Dr. Andersen filed his report. Brown sought discretionary review. (Application, Dkt. 75).

Because Brown resisted the continuance on both statutory and constitutional grounds and the district court overruled his objection, error has been preserved. Lamasters v. State, 821 N.W.2d 856, 862 (Iowa 2012) (issues raised and decided by the district court are preserved for consideration on appeal).

B. Standard of Review. Matters of statutory interpretation are reviewed for corrections of errors at law. State v. Childs, 898 N.W.2d 177, 181 (Iowa 2017).

Constitutional issues are reviewed de novo. State v. Veal, 930 N.W.2d 319, 327 (Iowa 2019).

C. Discussion. Under chapter 812, when the court receives a report that a defendant, who has been found incompetent and been committed for restoration treatment, cannot be restored within a reasonable amount of time, a hearing must be held within 14 days. Iowa Code §§ 812.8(3) & (4). Because chapter 812 implements the federal due process requirements regarding the prosecution of incompetent defendants, the purpose of such a quick turnaround in the hearing requirement is certainly due process concerns. See State v. Einfeldt, 914 N.W.2d 773, 779 (Iowa 2018) (The Iowa legislature adopted Iowa Code chapter 812 "to implement the federal due process requirements as enunciated by the Supreme Court."). See also Jackson v. Indiana, 406 U.S. 715, 738 (1972) (holding due process requires that defendant be held only a "reasonable period of time" when he's been committed for restoration of competency).

Thus, the Iowa legislature has deemed 14 days a reasonable delay before either reinstating proceedings against the defendant if he has been restored to competency or to terminate the commitment if he is not able to be restored. See Iowa Code §§ 812.8(5) & (8). The 14-day deadline is mandatory:

> Upon receiving a notification under this section, the court *shall* schedule a hearing to be held within fourteen days. The court *shall* also issue an order to transport the defendant to the hearing if the defendant is in custody or is being held in an inpatient facility. The defendant *shall* be transported by the sheriff of the county where the court's motion or the application pursuant to section 812.3 was filed.

Iowa Code § 812.8(4) (emphasis added).

In this case, the substantive, evidentiary portion of the hearing was held 94 days after Dr. Andersen's final report was filed and 81 days after the 14-day time limit imposed by section 812.8 expired. The only justification for the delayed hearing was to allow the State to obtain a second opinion on Brown's competency. Because the State was not entitled to a second opinion, as argued in section II above, this was not sufficient

cause to justify the extensive delay, particularly when the State was on notice for eight months that the chances of restoring Brown were slim. Under these circumstances, the delay violated not only the statute but also Brown's due process rights under the Fourteenth Amendment.

To determine whether the substantive due process rights of an incompetent criminal defendant have been violated, the court will balance their liberty interests in freedom from incarceration and in restorative treatment against the legitimate interests of the State. See Youngberg v. Romeo, 457 U.S. 307, 321 (1982). In this case, Brown has the same fundamental liberty interest as any person who has not yet been convicted of a crime. State v. Hernandez-Lopez, 639 N.W.2d 226, 238 (Iowa 2002); Kansas v. Hendricks, 521 U.S. 346, 356 (1997) ("[F]reedom from physical restraint has always been at the core of the liberty protected by the Due Process Clause.") As an incompetent criminal defendant, he also has "a liberty interest in receiving restorative treatment." Oregon Advoc. Ctr. v.

Mink, 322 F.3d 1101, 1121 (9th Cir. 2003). "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." Jackson v. Indiana, 406 U.S. 715, 738 (1972).

The State's interest in this case was seeking a second opinion on Brown's competency. This interest was minimal given the situation. First, as argued above, the second opinion at this stage of the proceedings was not authorized by statute. Second, the opinion that Brown could not be restored was provided by the doctors who had been treating Brown on an intensive, in-patient basis for eight months. These doctors were not Brown's hired experts, they were neutral professionals who employed by the Department of Corrections and assigned by the legislature and the court to evaluate and treat Brown. And finally, the State had been on notice for the entirety of Brown's eight-month treatment that the doctors at IMCC were

skeptical of his chances for restoration, the State did not seek a second opinion until the 14-day clock started running.

Brown was harmed by the 81-day delay. While waiting for the State to obtain a second opinion, Brown was held in jail, not a hospital, and was no longer receiving restorative treatment.

> County jails are simply unable to provide restorative treatment, and the jails' disciplinary systems may exacerbate the defendants' mental illnesses. Holding incapacitated criminal defendants in jail for weeks or months violates their due process rights because the nature and duration of their incarceration bear no reasonable relation to the evaluative and restorative purposes for which courts commit those individuals.

State v. Hand, 429 P.3d 502, 505 (Wash. 2018).

This was true in Brown's case. Brown's medication was adjusted, resulting a degradation of his mental health, and he experienced a resurgence of the positive symptoms of schizophrenia that had been controlled while he was at IMCC. (Def. Ex. D); (Stipulation, Dkt. 67) (Conf. App. p. 81). As well, the delay allowed the State to obtain an opinion that Brown had been restored, which was improperly considered and adopted

by the district court when the hearing was finally held. (Order for Arraignment, Dkt. 68) (App. pp. 57-75).

Because chapter 812 required the court to hold a hearing within fourteen days of the filing of Dr. Andersen's report, the hearing held 94 days later violated Brown's statutory rights. The delay of 81 days beyond the statutory deadline violated Brown's due process rights. See Oregon Advoc. Ctr. v. Mink, 322 F.3d 1101, 1122 (9th Cir. 2003) (holding due process rights of incompetent criminal defendants were violated by being held in jail for weeks or months awaiting transfer for restorative treatment); Stiavetti v. Clendenin, 280 Cal. Rptr. 3d 165, 170 (Cal. Ct. App. 2021) (holding due process rights of incompetent defendants were violated when they were held in jail and not transferred to a treatment facility within the 28-day deadline).

D. 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.

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 $4.30, and that amount has been paid in full by the Office of the 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:

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