

STATE OF LOUISIANA

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NO. 2008-KA-0314

VERSUS

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COURT OF APPEAL

JAMES W. CAMPER

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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BONIN, J., CONCURS AND ASSIGNS REASONS

I respectfully concur in the decision, but write relative to the “Error Patent” portion of it.

The trial court record indicates the trial judge never made a determination of the defendant’s capacity “to understand the proceedings against him or to assist in his defense.” La. C. Cr. P. art. 641. While the record does show that the trial judge set a competency hearing, the record is silent as to whether such a contradictory hearing was conducted, as required by La. C.Cr.P. art. 647.

Since the record shows the scheduling of the hearing,¹ we have treated this matter as an “error patent” in accord with State v. Nicholas, 587 So.2d 16, 17 (La. App. 3 Cir. 1991) and cases cited therein; La. C.Cr.P. art. 920(2).

Louisiana Code of Criminal Procedure article 642, entitled “How mental incapacity is raised; effect,” sets out what should have been followed:

The defendant’s mental incapacity to proceed may be raised at any time by the defense, the district attorney, or the court. When the question of the defendant’s mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution, except the institution of prosecution, until the defendant is found to have the mental capacity to proceed.

¹ This is why we do not determine that the “defendant implicitly waived his right to have the motion heard.” State v. Gowan, 96-488 (La. 3/29/96), 670 So.2d 1222; State v. Dugas, 96-49 (La. App. 3 Cir. 10/9/96), 683 So.2d 1253, 1256.

[Emphasis added]

Contrary to this codal mandate, further steps were taken in the criminal prosecution of the defendant, although his mental capacity is still at issue.

In order to ensure full procedural due process protection to the defendant, we have directed the trial court to conduct a retrospective competency hearing. Rather than proposing a reversal of the conviction, I have agreed to this disposition because (1) the minutes reflect Dr. Deland interviewed the defendant on September 6, 2007, (2) she testified at the trial that she had conducted the interview,² and (3) the defendant himself testified at the trial.

Following the retrospective competency hearing, it appears that the trial judge may well be able to make a “meaningful” determination as to whether Mr. Camper was competent at the time of trial. Therefore, the trial court should proceed under State v. Snyder, 1998-1078, p. 32 (La. 4/14/99), 750 So.2d 832, 856:

If the trial court concludes defendant was competent, no new trial is required to be conducted. . . . If the trial court finds a meaningful inquiry cannot be had, or if it determines after the [nunc pro tunc] hearing that defendant was not competent at the time of his trial, defendant shall be entitled to a new trial. [Citations omitted]

² Dr. Deland, a forensic psychiatrist, testified at the trial on the merits on the effect of drugs and alcohol on the victim, and not about the defendant’s mental capacity.