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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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AUG 24 2000

State of North Dakota,)
)
 Plaintiff-Appellee,)
)
 -vs-)
)
 George Gleeson,)
)
 Defendant-Appellant.)
)

Supreme Court No. STATE OF NORTH DAKOTA
20000084

BRIEF OF PLAINTIFF-APPELLEE

Appeal from Judgment of Conviction
Dated March 23, 2000
Burleigh County District Court
Case No. 08-99-K-02230
South Central Judicial District
The Honorable Robert O. Wefald, Presiding

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TABLE OF STATUTES AND AUTHORITIES

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§12.1-04-06

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STATEMENT OF THE ISSUES

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I. WHETHER THE TRIAL COURT COMMITTED OBVIOUS
ERROR BY FAILING TO ORDER A COMPETENCY
EVALUATION OF THE DEFENDANT DURING TRIAL.

STATEMENT OF THE CASE

1 Gleeson was charged with one count of
2 driving while license was revoked, a Class B
3 misdemeanor, by uniform citation and pled not
4 guilty to the offense. On March 23, 2000, a jury
5 trial was conducted with Defendant being found
6 guilty of the offense.

7
8 On July 15, 2000, Gleeson was arrested for
9 driving while license revoked by Burleigh County
10 Sheriff's Deputy Lonny Quam. (Trial Transcript,
11 Pages 26-31). During Quam's stop, Gleeson stated
12 that he was trying to get his driver's license
13 cleared, that he had been having problems with the
14 license bureau but that everything should be
15 cleared up. (Trial Transcript, Page 31. Lines
16 14-16).

17 On July 15, 2000, Gleeson made his initial
18 appearance in Burleigh County District Court before
19 the Honorable Donald Jorgenson. During the initial
20 appearance, questions directed to Gleeson by Judge
21 Jorgenson revealed Gleeson's current address; that
22 he was in the process of changing his address with
23 local postal authorities; that he understood the
24 charge, although he did not agree with the charges,
25 and the possible penalties associated with the
26 charge; that he had completed a couple years of
27 college; that he requested the assistance of court

1 appointed counsel; and that he understood each of
2 the conditions of his bond. (Initial Appearance
3 Transcript, Pages 4-9).

4 A dispositional conference was originally
5 scheduled on September 13, 1999. Gleeson failed to
6 appear having requested a continuance to allow his
7 attorney additional time to prepare his defense in
8 light of a dismissal of a driving under the
9 influence charge in municipal court in Bismarck.
10 (Dispositional Conference Transcript, Page 31,
11 Lines 14-16). The dispositional conference was
12 rescheduled for October 5, 1999. During the
13 October 5, 1999 dispositional conference, Gleeson
14 revealed that he understood the identity of
15 participants in the various criminal proceedings
16 including that Paul Frassee is the City Attorney,
17 Benjamin Graff is a District Court Judge and
18 William Severin is a municipal court judge. (
19 Dispositional Conference Transcript, Pages 2-7).

20 On March 23, 2000, a trial was held. At
21 trial Gleeson testified in his own behalf
22 contending that he had requested a hearing on the
23 suspension of his driving privileges and had never
24 received notice of the hearing but had received
25 notice of the subsequent suspension. (Trial
26 Transcript, Pages 47-50). The Court provided
27 Gleeson great latitude in explaining to the jury

1 why his driving privileges should never have been
2 suspended as a result of the driving under the
3 influence charge. (Trial Transcript, Page 50,
4 Lines 22-23). Gleeson went on to describe in great
5 detail the stop for driving under the influence
6 which resulted in the administrative suspension of
7 his driving privileges. (Trial Transcript, Pages
8 50-57). During cross examination, Gleeson again
9 affirmed that he received notice of the suspension
10 of his driving privileges. (Trial Transcript,
11 Page 62, Lines 3-10). The jury subsequently
12 convicted Gleeson of driving while his license was
13 revoked. (Trial Transcript, Pages 69-70).

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ARGUMENT

I. WHETHER THE TRIAL COURT COMMITTED OBVIOUS ERROR BY FAILING TO ORDER A COMPETENCY EVALUATION OF THE DEFENDANT DURING TRIAL.

Whenever there is a doubt as to a person's fitness to proceed, or reason to believe that mental disease or defect will otherwise become an issue in the case, the court may order that the person undergo a psychological evaluation. Section 12.1-04-06, N.D.C.C. Once evidence creating a reasonable doubt as to the defendant's competency is raised, a competency hearing is required. See, State v. Storbakken, 246 N.W.2d 78 (N.D. 1976), citing, Pate v. Robinson, 383 U.S. 375 (1966); Drope v. Missouri, 420 U.S. 162 (1975); Rand v. Swenson, 501 F.2d 394 (8th Cir. 1974); Moore v. United States, 464 F.2d 663 (9th Cir 1972); and State v. Fischer, 231 N.W.2d 147 (N.D. 1975).

Here, the only suggestion that Gleeson might not be competent to stand trial is Gleeson's Counsel's statement that Gleeson's behavior at all of his court appearances was eccentric. See, Appellant's Brief, page 5. In the present case alone, Gleeson appeared before three different district court judges; Judge Donald L. Jorgenson for the initial appearance, Judge Bruce Haskell for the dispositional conference, and Judge Robert Wefald for the trial. See, Initial Appearance

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Transcript, Pages 1; Dispositional Conference Transcript, Page 1; and Trial Transcript, page 1. At each of those appearances Gleeson provided appropriate answers to questions posed to him by the court.

At his initial appearance when Judge Jorgenson inquired as to Gleeson's current address, Gleeson not only provided his current address but went on to explain that he was in the process of changing his address with local postal authorities. See, Initial Appearance Transcript, Pages 4-5. Gleeson also responded appropriate to questions about the nature of the charge, penalties associated with the charge, his educational background, desire for court appointed counsel, and understanding of the conditions of his bond. See, Initial Appearance Transcript, Pages 5-9.

Gleeson although failing to appear at the time initially scheduled for his dispositional conference, had the where with all to request a continuance. See, Dispositional Conference Transcript, Pages 1-3. Requesting the same on the grounds that his attorney needed additional time to prepare his defense due to the dismissal of the driving under the influence charge upon which his driving privileges were suspended. See, Dispositional Conference Transcript, Pages 1-3.

1 When Gleeson appeared at the rescheduled
2 dispositional conference, he again responded
3 appropriately to questions posed by Judge Bruce
4 Haskell. See, Dispositional Conference
5 Transcript, Pages 1-9. Expressing disdain at the
6 stress of the pending proceeding and its negative
7 effect on his health hardly constitutes a finding
8 of mental deficiency. See, Dispositional
9 Conference Transcript, Pages 2-9.

10 At trial, following conclusion of the
11 State's case, all parties became aware that
12 disciplinary complaints had been filed against the
13 prosecutor, judge and defense attorney which might
14 explain the latitude shown by the court in allowing
15 Gleeson to make a statement to the jury. See,
16 Trial Transcript, Pages 44-50. During Gleeson's
17 testimony it became apparent that he did not
18 understand the difference between the
19 administrative and criminal sanctions which could
20 be imposed on a charge of driving under the
21 influence. See, Trial Transcript, Page 50, Lines
22 7-21. Further, it is obvious that Gleeson did not
23 understand that the dismissal of a driving under
24 the influence criminal charge would not in and of
25 itself reinstate his driving privileges. See,
26 Trial Transcript, Page 50, Lines 7-21. Gleeson's
27 misunderstanding of process does not call into

1 question his competency. Due process does not
2 mandate a full blown competency hearing every time
3 there is the slightest evidence of incompetency.
4 See, State v. Storbakken, 246 N.W.2d 78 (N.D.
5 1976); Curry v. Estelle, 531 F.2d 766 (5th Cir
6 1976); and United States ex rel. Roth v. Keller,
7 455 F.2d 1105 (2nd Cir 1972). A competency hearing
8 is only warranted where there is reason to doubt a
9 defendant's competency. See, State v.
10 Storbakken, 246 N.W.2d 78 (N.D. 1976), citing, Pate
11 v. Robinson, 383 U.S. 375 (1966); Drope v.
12 Missouri, 420 U.S. 162 (1975); Rand v. Swenson, 501
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CONCLUSION

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The trial court did not err in failing to halt the trial and order a competency evaluation for Gleeson. Based on the evidence set forth in the transcripts before the court, there was no reason for the trial court to doubt the competency of Gleeson thereby requiring further inquiry. Thus, the State respectfully requests the Court affirm the jury verdicts and Gleeson's criminal conviction.

Respectfully submitted this 23rd day of August, 2000.


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