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Kenneth Siegan

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CRIMINAL PROCEDURE—COMPETENCY—UNCONTRADICTED  
HISTORY OF IRRATIONAL BEHAVIOR AS A REQUIRE-  
MENT FOR HEARING SUA SPONTE

In 1959, defendant was convicted of the murder of his common law wife. During the trial, evidence was introduced showing that the defendant had previously been committed to a mental institution. Upon release, he murdered his eighteen month old son and upon conviction served almost four years in prison. It was also shown that unsuccessful efforts had been made by his mother to recommit him. No request for a competency hearing was made and defendant was subsequently convicted. On direct appeal to the Supreme Court of Illinois, the defendant contended that he was deprived of his right to a competency hearing. The conviction was affirmed upon the court's finding that no hearing had been requested, and that the evidence failed to raise a sufficient doubt to require the trial court to conduct a hearing on its own motion. Subsequent habeas corpus proceedings in the federal courts resulted in defendant's discharge. The United States Supreme Court held that the defendant was constitutionally entitled to a hearing to determine his competency to stand trial sua sponte, due to the uncontradicted evidence of defendant's history of irrational behavior. *Pate v. Robinson*, 383 U.S. 375 (1966).

The *Pate* case is unique because it introduces an additional criterion for courts to employ in ascertaining when it should order a competency hearing sua sponte. Though courts have traditionally taken notice of a defendant's competency by observing his demeanor at the trial, this decision introduces the principle that the accused's history of mental incapacity is to be used as a standard. In the instant case, the Court held that despite the accused's apparent competent demeanor at the trial, his history of irrational behavior was sufficient to require a competency hearing on the court's own motion.

The instant case may be viewed as a modified application of a concept deeply rooted in the history of criminal jurisprudence. As early as 1680, it was recognized that if a man of

[S]ound memory commits a capital offense, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such his phrenzy. . . . And, if such person after his plea, and before his trial, become of *non sane memory*, he shall not be tried; or, if after his trial, he becomes of *non sane memory*, he shall not receive judgment; or, if after judgment he becomes of *non sane memory*, his execution shall be spared; for were he of sound memory, he might allege somewhat in stay of judgment or execution.<sup>1</sup>

<sup>1</sup> 1 HALE, PLEAS OF THE CROWN 34 (1680).

Blackstone thereafter refined this concept in his observation that an incompetent capital offender, though sane when he commits the crime, should not be prosecuted, sentenced or punished.<sup>2</sup>

In *Hadfield's Case*,<sup>3</sup> in 1800, the defendant had attempted to assassinate George III by firing a pistol at him. Hadfield was indicted for high treason. The evidence showed that the defendant, an old soldier, had sustained a severe brain injury in battle and that he labored under the delusion that he must sacrifice himself to keep the world from coming to an end. In the King's Bench it was held that Hadfield should not be tried criminally due to his incompetency, but that he should be detained in a proper place of confinement.

At common law, the principle was recognized that an insane criminal defendant could not be required to plead, and could not be placed on trial while suffering from such disability.<sup>4</sup> This rule was based on the rationale that by an act of providence, the accused was unable to defend himself.<sup>5</sup> For example, there may be circumstances within his knowledge by which he could be proven innocent, but due to his mental incapacity, he is unable to supply his personal knowledge to aid in his defense.<sup>6</sup>

The matter of mental competency has constitutional ramifications as well. In *United States v. Gundelfinger*,<sup>7</sup> the defendant was charged with sending obscene, lewd and lascivious literature through the mail. The issue was raised whether or not the defendant was mentally competent to stand trial. The court's ruling upheld the almost universal principle that a person charged with a crime cannot be tried while suffering from mental incapacity, and, if such a person is placed on trial, it is a violation of his constitutional right to due process of law.

<sup>2</sup> 4 BLACKSTONE, COMMENTARIES 24 (4th ed. 1771).

<sup>3</sup> 27 STATE TRIALS 1281 (1800).

<sup>4</sup> *People v. Reeves*, 412 Ill. 555, 107 N.E.2d 861 (1952). See Hynning, *Mental Disorder in Illinois Criminal Law*, 12 CHI. KENT L. REV. 19, 32 (1933); 59 MICH. L. REV. 1078 (1961), wherein the author stated: "It was the rule at common law that an accused could not be required to plead to an indictment or be tried for a crime when he was so mentally disordered that he could not meet the common law tests of competency."

<sup>5</sup> *People v. Maynard*, 347 Ill. 422, 179 N.E. 833 (1932). See 39 TEXAS L. REV. 505, 507 (1961): "The policy which dictates that a finding of present insanity, i.e., insanity at the time of the trial, operates to suspend prosecution rests on the notion that the defendant must meet some minimal standard of competency before there can be a fair trial."

<sup>6</sup> See generally, 39 TEXAS L. REV., *supra* note 5.

<sup>7</sup> 98 F. Supp. 630 (W.D. Penn 1951); *Youtsey v. United States*, 97 Fed. 937 (6th Cir. 1899); *People v. McKinstry*, 30 Ill.2d 611, 198 N.E.2d 829 (1964); *People v. Bender*, 20 Ill.2d 45, 169 N.E.2d 328 (1960).

When facts are brought to the attention of the trial court, which raise a bona fide doubt as to the defendant's present mental competence, it is obligatory upon the court to order a hearing to determine the defendant's competency to stand trial.<sup>8</sup> This procedure is a requisite, whether the doubt arises before or during the trial, and whether it comes from suggestion by counsel, or from the court's own observation.<sup>9</sup>

Traditionally, the duty of raising the issue of capacity to stand trial was imposed upon the defendant and his counsel.<sup>10</sup> The defendant waived his right to a competency hearing if he failed to raise the issue of mental incompetency and instead entered a plea of guilty, and the court pronounced sentence.<sup>11</sup> The trend of recent decisions, however, holds that a mentally incompetent defendant is incapable of raising the issue of his incompetency, and his failure to do so does not deprive him of his right to a hearing on a motion to vacate and set aside sentence on the ground that he was mentally incompetent during the time of trial.<sup>12</sup>

The hearing to determine the defendant's capacity to stand trial forms no part of the criminal hearing.<sup>13</sup> It is a civil proceeding and evidence introduced is not admissible in the criminal trial.<sup>14</sup> At the competency hearing, the guilt or innocence of the criminal defendant is not at bar; the sole issue is the accused's competency to stand trial.<sup>15</sup> The test espoused to resolve such issue is whether the accused has sufficient soundness of mind to appreciate the nature of the charges brought and the proceedings

<sup>8</sup> *Hunt v. State*, 284 Ala. 217, 27 So.2d 186 (1946); *People v. De Simone*, 28 Ill.2d 72, 190 N.E.2d 831 (1963); *People v. Baker*, 26 Ill. 2d 484, 488, 187 N.E.2d 227, 229 (1964), where the court stated: "[I]f, before or during trial, facts are brought to the attention of the court either from its own observations or by suggestion of counsel, which raise a bona fide doubt as to a defendant's present sanity, it becomes the duty of the court to impanel a jury to determine whether the accused is capable of understanding the charges against him and of cooperating with his counsel." See also *State v. Bladders*, 141 Kan. 683, 42 P.2d 934 (1935).

<sup>9</sup> *People v. Shrake*, 25 Ill.2d 141, 182 N.E.2d 754 (1962); *State v. Collins*, 162 Kan. 34, 174 P.2d 126 (1946).

<sup>10</sup> *United States v. Ragen*, 167 F.2d 543 (7th Cir. 1948); *People v. Haupris*, 396 Ill. 208, 71 N.E.2d 68 (1947); *People v. Reck*, 392 Ill. 311, 64 N.E.2d 526 (1946); *People v. Hart*, 333 Ill. 169, 164 N.E. 156 (1928).

<sup>11</sup> *McCane v. Alvis*, 98 Ohio App. 506, 130 N.E.2d 372 (1954).

<sup>12</sup> *Taylor v. United States*, 282 F.2d 16 (8th Cir. 1960); *Simmons v. United States*, 227 F. Supp. 778 (W.D. Ark. 1964); *Sturup v. United States*, 218 F. Supp. 279 (E.D. N.C. 1963).

<sup>13</sup> *People v. Cornelius*, 392 Ill. 599, 65 N.E.2d 439 (1946); *People v. Ross*, 344 Ill. App. 407, 101 N.E.2d 112 (1951).

<sup>14</sup> *People v. Ross*, *supra* note 13.

<sup>15</sup> *People v. Cornelius*, *supra* note 13; *Jordan v. State*, 124 Tenn. 81, 135 S.W. 327 (1911), wherein the court stated that the question presented is not the guilt of the defendant, but whether his mental condition is such that he can conduct a rational defense; the proceeding being wholly collateral to the trial in chief.

thereon, and whether he is so mentally disabled as to render him unable to consult with his attorney and conduct his defense in a rational and reasonable manner.<sup>16</sup>

The Illinois Code of Criminal Procedure requires the trial court to suspend proceedings and conduct a hearing to determine the defendant's competency in two specific situations. First, the court shall hold a competency hearing if it has reason to believe the defendant is incompetent "before trial or after judgement has been entered but before pronouncement of sentence or after a death sentence has been imposed but before execution of that sentence."<sup>17</sup> Second, if during the trial of the accused, the court has reason to believe him incompetent, the court shall suspend proceedings and conduct a competency hearing.<sup>18</sup> If the accused is adjudged incompetent, the criminal proceedings against him are suspended until he is cured of his disability. In the event the accused is found competent, the criminal proceedings recommence at the point they were suspended, without being prejudiced by the competency hearing. The Code supplies the criteria to be applied in determining the competency of the accused. An incompetent defendant is one who is,

[U]nable because of a physical or mental condition:

- (a) To understand the nature and purpose of the proceedings against him; or
- (b) To assist in his defense; or
- (c) After a death sentence has been imposed to understand the nature and purpose of such sentence.<sup>19</sup>

The Code has retained intact the rule that where evidence, which raises a bona fide doubt as to the defendant's competency to stand trial is brought to the attention of the court by counsel, the court must order a competency hearing. The rule has also remained unchanged, that if through its own observation, a doubt is raised in the mind of the court as to defendant's competency, the court must order a hearing *sua sponte* to determine his competency. The court is compelled to order a hearing on its own motion because under our system of jurisprudence, the courts are charged with the proper administration of justice. Justice demands that

<sup>16</sup> *Dusky v. United States*, 362 U.S. 402, (1960); *Moss v. Hunter*, 167 F.2d 683 (10th Cir. 1948); *United States v. Bostic*, 206 F. Supp. 855 (D.D.C. 1962); *Higgins v. McGrath*, 98 F. Supp. 670 (W.D. Mo. 1951); *United States v. Boylen*, 41 F. Supp. 724 (D. Ore. 1941); *People v. Lewis*, 2 Ill.2d 328, 118 N.E.2d 259 (1954); *People v. Geary*, 298 Ill. 236, 131 N.E. 652 (1921); *State v. Henke*, 196 Wash. 185, 82 P.2d 544 (1938). See 49 ILL. B.J. 216 (1958), where the test espoused as to the competency of the accused at the time of the trial was whether his mental capacity was sufficient to comprehend his own condition with reference to the proceedings against him and sufficient to render him capable of rationally conducting his defense.

<sup>17</sup> ILL. REV. STAT. ch. 38, § 104-2(a) (1965).

<sup>18</sup> ILL. REV. STAT. ch. 38, § 104-2(b) (1965).

<sup>19</sup> ILL. REV. STAT. ch. 38, § 104-1 (1965).

proceedings against an incompetent defendant be suspended until he can defend himself.<sup>20</sup>

Traditionally, the court, by its own observation, took notice of the accused's competency through his demeanor at the trial. The instant case provides an important modification of this principle. The Supreme Court held that, while the accused's "demeanor at the trial might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to dispense with a hearing on that very issue."<sup>21</sup> The decision thus provides an additional criterion for the court to consider in determining whether to order a competency hearing *sua sponte*. As a result of *Pate v. Robinson*, the courts must now take into account the "uncontradicted testimony of the accused's history of pronounced irrational behavior."<sup>22</sup> In so holding, the Supreme Court served notice on the lower courts that it would continue to vigorously protect the rights of the individual.

*Kenneth Siegan*

<sup>20</sup> *People v. Anderson*, 31 Ill.2d 262, 201 N.E.2d 394 (1964); *People v. Bender*, *supra* note 7; *People v. Burson*, 11 Ill.2d 360, 143 N.E.2d 239 (1957).

<sup>21</sup> *Pate v. Robinson*, 383 U.S. 375, 386 (1966).

<sup>22</sup> *Id.* at 385.

#### EVIDENCE—DEAD MAN'S ACT—APPLICABILITY TO HEIRSHIP PROCEEDINGS

Decedent died in 1963 leaving a will that failed due to the prior death of the sole legatee. Appellants filed a petition for leave to appear as heirs of the decedent, claiming to be children of the decedent's purported half brother. Appellees filed a petition stating that they were the sole heirs of the decedent. At the proceeding to establish heirship the magistrate allowed one of the appellees, an admitted heir, to testify as to heirship. The court overruled appellant's objection that the admitted heir was disqualified under section 2 of the Evidence Act<sup>1</sup> which prohibits an interested party from testifying on his own behalf when an adverse party sues or defends as an heir. The magistrate ruled that the appellee was a competent witness and on the basis of the disputed testimony held that appellants were not heirs. On appeal, the Appellate Court held that section 2 of

<sup>1</sup> ILL. REV. STAT. ch. 51, § 2 (1965): "No party to any civil action, suit or proceeding, or person directly interested in the event thereof, shall be allowed to testify therein of his own motion, or in his own behalf, by virtue of the foregoing section, when any adverse party sues or defends as the trustee or conservator of any habitual drunkard, or person who is mentally ill or mentally deficient, or as the executor, administrator, heir, legatee or devisee of any deceased person, or as guardian or trustee of any such heir, legatee or devisee, unless when called as a witness by such adverse party so suing or defending. . . ."