

SUPREME COURT NO. 80841-4

IN THE SUPREME COURT OF WASHINGTON

REC'D
NOV 04 2008
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

STEVEN HEDDRICK, JR.,

Petitioner.

RECEIVED
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STATE OF WASHINGTON
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary Yu, Judge

SUPPLEMENTAL BRIEF OF PETITIONER STEVEN HEDDRICK, JR.
(CORRECTED)

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A. SUPPLEMENTAL ISSUE STATEMENTS

1. The trial court found reason to doubt Heddrick's competency and ordered expert evaluation. Is reversal required because the court violated Heddrick's right to procedural due process by proceeding to trial without first holding an evidentiary hearing to determine competency?

2. Counsel for the assault case was absent when the court found Heddrick competent to stand trial. Is reversal required because the court's violation of Heddrick's right to assistance of counsel at a critical stage of the proceeding constituted structural error?

B. SUPPLEMENTAL STATEMENT OF THE CASE

The petition for review contains a detailed statement of the facts.¹ In sum, Heddrick suffered from chronic mental health problems. 2CP² 89-93, 103-128; 1RP³ 3-17. The state charged Heddrick with felony harassment and custodial assault in separate cases. 1CP 1-3; 2CP 1-6,

¹ Petition For Review at 2-5.

² This supplemental brief refers to the clerk's papers in the assault case as "1CP" and the clerk's papers in the harassment case as "2CP."

³ The verbatim report of proceedings in the harassment case are referenced as follows: 1RP - 9/8/04, 10/14/04, 1/20/05; 2RP - 7/14/05; 3RP - 7/18/05; 4RP - 7/19/05; 5RP - 7/20/05; 6RP - 7/21/05; 7RP - 7/27/05; 8RP - 8/29/05; 9RP - 9/26/05 and 11/23/05; 10RP - 10/10/05; 11RP - 10/11/05; 12RP - 10/12/05. The verbatim report of proceedings in the assault case are referenced as follows: 13RP - 7/27/05; 14RP - 10/12/05; 15RP - 10/13/05 (morning); 16RP - 10/13/05 (afternoon); 17RP - 11/18/05; 18RP - 11/23/05.

126. Trial judges in both cases, supported by representations made by the prosecutor and defense counsel, found reason to doubt Heddrick's competency and ordered psychiatric examination. 1CP 4-7; 2CP 38-41; 7RP 5, 9-10, 13-14, 19-20; 13RP 3-6. Defense counsel in the harassment case ultimately decided not to contest competency because her evaluator concluded Heddrick was competent. 11RP 14-15. On the next court date, the prosecutor told the judge that defense counsel in the assault case agreed the competency issue "needed to be taken care of." 10RP 4. Defense counsel for the assault case was not present when the competency determination was made and he did not otherwise participate in the process leading to that determination. 10RP 3-5; 11RP 14-15.

Against this backdrop, the trial judge found Heddrick competent in the assault case, did not enter an order finding him competent in the harassment case, and proceeded to trial in both cases. 1CP 8; 10RP 4-5; 11RP 14-15. The court did not make any oral or written findings of fact in support of its ultimate determination that Heddrick was competent. The court did not ask Heddrick any questions or engage in any colloquy with him. 10RP 3-5. Dr. White's oral conclusion was not backed by a report available for the court's review. 10RP 3-5; 11RP 14-15. No witnesses were sworn and no evidence was offered or admitted. 10RP 3-5.

C. ARGUMENT

1. HEDDRICK WAS DENIED DUE PROCESS WHEN THE COURT FOUND HIM COMPETENT WITHOUT CONDUCTING AN EVIDENTIARY HEARING ON THE MATTER.

Once a trial court finds reason to doubt competency, it is constitutionally required to hold an evidentiary hearing to resolve the issue. The Court of Appeals wrongly held the trial court did not violate Heddrick's right to procedural due process in failing to hold an adequate hearing before finding him competent and proceeding to trial.

- a. The Need For A Formal Competency Hearing Is Triggered When The Trial Judge Finds Reason To Doubt Competency.

Competency claims are based either upon substantive due process or procedural due process. Barnett v. Hargett, 174 F.3d 1128, 1133 (10th Cir. 1999). "A competency claim based upon substantive due process involves a defendant's constitutional right not to be tried while incompetent." Id. "A competency claim based upon procedural due process involves a defendant's constitutional right, once a bona fide doubt has been raised as to competency, to an adequate state procedure to insure that he is in fact competent to stand trial." Id. at 1133-34. Heddrick's procedural due process right is at issue here. Heddrick need not establish he was incompetent to stand trial to obtain relief; rather he need only

establish the trial judge should have ordered a hearing to determine his competency. Roberts v. Dretke, 381 F.3d 491, 497 (5th Cir. 2004).

The trial judge in both cases, backed by representations made by both parties, as well as Heddrick's history of fluctuating competence,⁴ chronic mental illness, and disruptive behavior, found reason to doubt Heddrick's competency and ordered psychiatric examination. The Honorable Mary Yu expressly found Heddrick competent in the assault case and proceeded to trial in both cases without conducting an evidentiary hearing to resolve the issue of Heddrick's competency.

The law is settled. The "[f]ailure to observe procedures adequate to protect an accused's right not to be tried while incompetent to stand trial is a denial of due process." In re Fleming, 142 Wn.2d 853, 863, 16 P.3d 610 (2001). A defendant's due process right to a fair trial requires the trial court to conduct an evidentiary hearing whenever there is reason to doubt a defendant's competency, even if the defendant does not request such a hearing. See, e.g., Pate v. Robinson, 383 U.S. 375, 377, 385, S. Ct. 836, 15 L. Ed. 2d 815 (1966); Odle v. Woodford, 238 F.3d 1084, 1087 (9th Cir. 2001); Johnson v. Norton, 249 F.3d 20, 26 (1st Cir. 2001); Weisberg v. Minnesota, 29 F.3d 1271, 1275-76 (8th Cir. 1994).

⁴ Heddrick was found incompetent in the harassment case in October 2004. 2CP 94-96.

Consistent with this constitutional mandate, once the trial court makes a threshold determination that there is "reason to doubt" the defendant's competency pursuant to RCW 10.77.060, the court must order a formal hearing to determine competency before proceeding to trial. State v. Marshall, 144 Wn.2d 266, 278, 27 P.3d 192 (2001); State v. Lord, 117 Wn.2d 829, 901, 822 P.2d 177 (1991).⁵ Due process requires the trial court to make findings of fact and conclusions of law after an evidentiary hearing on the matter of competency. State v. Israel, 19 Wn. App. 773, 776-78, 577 P.2d 631 (1978). Due process also requires assistance of counsel at the hearing. See State v. Mempa, 78 Wn.2d 530, 534, 477 P.2d 178 (1970) (denial of counsel at crucial stage violates due process).

The Court of Appeals ignored this established precedent and instead applied a Mathews⁶ balancing test to determine what process Heddrick deserved. Slip op., at 1, 4, 6, 10. The courts have already definitively determined the amount of process due and concluded an evidentiary hearing is required whenever the trial court has or should have

⁵ State v. Johnston, in which this Court held the trial court did not abuse its discretion in failing to hold a formal competency hearing, is distinguishable because, unlike Heddrick's case, there no indication the trial court ever found reason to doubt competency. State v. Johnston, 84 Wn.2d 572, 576-77, 527 P.2d 1310 (1974).

⁶ Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

reason to doubt competency. The Court of Appeals' decision cannot be squared with established precedent.

The Court of Appeals cited Morris v. Blaker to support its position, even though Morris is a civil case that has nothing to do with the issue of procedural due process for a criminal defendant whose competency is in doubt. Slip op. at 6; Morris v. Blaker, 118 Wn.2d 133, 136, 140, 821 P.2d 482 (1992). Based on the nature of the interests at stake, the United States Supreme Court has already determined the Mathews balancing test does not provide the appropriate framework for assessing the validity of procedural rules related to competency in criminal cases. Medina v. California, 505 U.S. 437, 449, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992). This Court should reject the Mathews balancing test as inapplicable. Pate struck the balance decades ago. An evidentiary hearing is required.

b. Competency Is Not Properly Determined By Waiver Or Stipulation.

Heddrick's attorney for the harassment case, Tracy Lapps, said she no longer contested competency based on Dr. White's conclusion that Heddrick was competent. Even if her failure to contest competency is tantamount to a stipulation that Heddrick was competent, such representation cannot substitute for an evidentiary hearing on the matter.

The person whose competency is in doubt cannot waive his right to have the court properly determine his capacity to stand trial. Pate, 383 U.S. at 384; accord In re Pers. Restraint of Hews, 108 Wn.2d 579, 586, 741 P.2d 983 (1987) (citing Pate, 383 U.S. at 384); State v. Smith, 88 Wn.2d 639, 642, 564 P.2d 1154 (1977), overruled on other grounds, State v. Jones, 99 Wn.2d 735, 744, 664 P.2d 1216 (1983). More specifically, parties cannot simply stipulate to competency. People v. Lewis, 103 Ill. 2d 111, 114-16, 468 N.E.2d 1222 (Ill. 1984) (holding trial court did not err in accepting stipulation to evidence of competence, as opposed to accepting stipulation to competence itself). This Court agrees defense counsel cannot waive the issue on behalf of a client. Smith, 88 Wn.2d at 642 (citing In re Davis, 8 Cal. 3d 798, 808, 505 P.2d 1018, 106 Cal. Rptr. 178 (1973)). "[C]ounsel is not a trained mental health professional, and his failure to raise petitioner's competence does not establish that petitioner was competent. Nor, of course, does it mean that petitioner waived his right to a competency hearing." Odle, 238 F.3d at 1088-89.

In People v. Thompson, the parties stipulated to the findings of the two doctors contained in the competency reports and to their conclusion that the defendant, who had previously been declared unfit, was fit to stand trial. People v. Thompson, 158 Ill. App. 3d 860, 864-65, 511 N.E.2d 993 (Ill. App. 1987). The hearing failed to meet minimal due process

standards necessary to find the defendant fit to stand trial because the trial judge wrongly relied on the stipulation to determine competence and did not exercise its discretion in ruling on the issue:

It does not appear from the record that the trial court even reviewed the reports that the parties were stipulating to. Although not dispositive, the trial court did not question the defendant, who was present at the fitness hearing, about his opinion as to his fitness to stand trial. The trial judge also failed to question the attorneys regarding the reports that they were stipulating to. The court should not be passive, but active in making the assessment as to fitness which the law requires.

Id.

Here, the trial judge similarly did not exercise her discretion in addressing Heddrick's competency. See State v. Flieger, 91 Wn. App. 236, 242, 955 P.2d 872 (1998) (trial court's failure to exercise discretion is an abuse of discretion). The judge failed to question defense counsel about Dr. White's competency conclusion and failed to question Heddrick about anything. The lack of any finding that Heddrick was competent in the harassment case strongly suggests the trial judge proceeded to trial in that case based on Lapps' decision not to contest competency. The judge had a constitutional obligation to take the initiative when faced with a passive defense attorney in one case and an absent defense attorney in the other.

c. The Trial Court Cannot Properly Determine Competency Based Solely On A Psychiatric Report.

Judge Yu never specified the basis on which she found Heddrick competent in the assault case, although a fair inference is that her determination was based on Dr. White's unexplained conclusion that he was competent.

It is insufficient for the trial court to rest its entire competency determination on a psychiatric report. Taylor v. Horn, 504 F.3d 416, 433 (3rd Cir. 2007). Competency to stand trial is a legal concept, not a medical one. State v. Bertrand, 123 N.H. 719, 726, 465 A.2d 912 (N.H. 1983). Expert opinion that a defendant is competent is "merely evidence of competency." Id. For these reasons, "[t]rial judges must not be permitted to abdicate to psychiatrists their judicial responsibility to determine whether a criminal defendant is competent to stand trial." Id. The trial judge must still make an independent determination of competency even where a medical professional concludes a defendant is competent. Barnett, 174 F.3d at 1135; United States v. Makris, 535 F.2d 899, 908 (5th Cir. 1976). In Bertrand, conviction was reversed because the existence of two psychiatric reports opining the defendant was competent did not satisfy the court's obligation to hold an evidentiary hearing on its own initiative. Bertrand, 123 N.H. at 725-26.

d. The Process By Which The Trial Court Determined Heddrick's Competency Was Inadequate.

In determining Heddrick's competency, the trial judge heard no testimony from Dr. White or anyone else in a position to offer information pertinent to the issue. She did not ask Heddrick a single question. Heddrick's attorney for the assault case was absent. The judge entered no findings of fact, either orally or in writing, in support of her ultimate finding that Heddrick was competent to stand trial in the assault case. She made no finding that Heddrick was competent to stand trial in the harassment case, although that case nonetheless proceeded to trial as if she had. See In re Detention of LaBelle, 107 Wn.2d 196, 218, 728 P.2d 138 (1986) (noting that while the degree of particularity may vary depending on the circumstances of the case, required findings "should at least be sufficient to indicate the factual bases for the ultimate conclusions."); Bertrand, 123 N.H. at 726 ("the absence of a record containing specific findings precludes us from adequately reviewing the basis for the trial judge's implicit acceptance of the fact that the defendant was competent to stand trial."). Due process demands more. Israel, 19 Wn. App. at 776-78 (findings of fact and conclusions of law entered after evidentiary hearing); Mempa, 78 Wn.2d at 534 (assistance of counsel); cf. State v. Brooks, 16 Wn. App. 535, 538, 557 P.2d 362 (1977) (trial court substantially

complied with the purpose and intent of RCW 10.77.060 because defendant received "a full competency hearing" consisting of testimony presented by two experts of the defendant's own choosing).

In Griffin v. Lockhart, the Eighth Circuit reversed conviction because the state trial court did not conduct a full, fair, and adequate hearing on the subject of the defendant's competency:

No witnesses were called; the only medical report on Griffin was the one paragraph letter from the mental health center; apparently no attempt was made to obtain a more complete report from the mental health center; and the trial court's questioning of Griffin was very limited. It is likely, in fact, that the state trial court did not even believe it was conducting a hearing, since it approved Griffin's request to withdraw his notice and motion putting in issue his competency.

Griffin v. Lockhart, 935 F.2d 926, 931 (8th Cir. 1991).

The circumstances here are worse. Judge Yu had no information as to how Dr. White arrived at his conclusion and there was no description of the evaluation itself. Hearing no testimony, the judge had no opportunity to assess the credibility of any witnesses, including Dr. White.

The trial judge in Griffin at least questioned the defendant to some extent before pronouncing him competent. Not only did the judge fail to question Heddrick at the time she determined his competency, the record does not show any verbal interaction between the judge and Heddrick

from the time she found reason to doubt competency in July 2005 through October 2005, when the cases proceeded to trial.

"[A] trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." Drope v. Missouri, 420 U.S. 162, 181, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975). Judge Yu's responsibility to be alert for changing conditions is especially strong because she was on notice that Heddrick was returned to competency in January 2005 only after being forcibly medicated against his will. 2CP 94-96, 132. The evaluator who concluded Heddrick was competent at "the present time" back in January 2005 recognized Heddrick was at risk of stopping medication and decompensating. 2CP 133-34. Nothing in the record showed Heddrick received appropriate medication to maintain his competency after his stay at Western State Hospital ended in January 2005, but no inquiry into the matter was made. Judge Yu also knew Heddrick had already been declared incompetent at an earlier stage of the harassment case.

The Court of Appeals opined an evidentiary hearing would not have "added anything" because no other expert reported Heddrick was incompetent and the record did not show any problems involving competency arose at either trial. Slip op. at 10. First, "once a doubt about the competency of an accused exists, later behavior cannot be relied upon

to dispense with a hearing." Griffin, 935 F.2d at 931 (citation and internal quotation marks omitted); accord Pate, 383 U.S. at 386. Second, the Court of Appeals' analysis betrays a remarkably constricted view of why procedural due process is required in the first place. The right to procedural due process operates as a safeguard to ensure that substantive due process rights are not violated. Griffin, 935 F.2d at 929. The very purpose of an evidentiary hearing is to give the trial court an opportunity to make an informed decision on the substantive determination at hand based on all relevant evidence.

Here, there was no evidence in any formal sense and no hearing at all. The trial judge wrongly relied on defense counsel's decision not to contest competency and an expert's unexplained conclusion without making her own independent determination of competency by considering all relevant evidence. The Court of Appeals could only speculate an evidentiary hearing would not have added anything. An evidentiary hearing is constitutionally required so that courts need not resort to speculation in determining competency.

e. The Appropriate Remedy Is Reversal Of The Convictions And Remand For New Trials.

"When a state court wrongfully fails to hold a competency hearing, 'it often may be impossible to repair the damage retrospectively.'"

McMurtrey v. Ryan, 539 F.3d 1112, 1131 (9th Cir. 2008) (citation omitted). Retrospective determinations of whether a defendant is competent to stand trial are strongly disfavored. Wilkins v. Bowersox, 145 F.3d 1006, 1014 (8th Cir. 1998). Remand for an adequate competency hearing is permitted only when the trial court can meaningfully evaluate whether a defendant was competent at the time of trial. McMurtrey, 539 F.3d at 1131.

Two major factors considered in determining whether a meaningful retrospective hearing on competency can be held are the passage of time and the availability of contemporaneous medical reports. Id.; State v. Davis, 281 Kan. 169, 182-83, 130 P.3d 69 (Kan. 2006). Other factors include any statements by the defendant in the trial record, and the availability of individuals and trial witnesses, both experts and non-experts, who were in a position to interact with the defendant before and during trial. McGregor v. Gibson, 248 F.3d 946, 962-63 (10th Cir. 2001).

"[I]t is the rare case in which a meaningful retrospective competency determination will be possible. The inherent difficulty of such a determination, of course, is that there will seldom be sufficient evidence of a defendant's mental state at the time of trial on which to base a subsequent competency determination. [citation omitted] This is because a trial court's initial failure to hold a timely competency hearing is

almost always rooted in a fundamental inattentiveness to the defendant's mental condition. The record in such cases will, therefore, seldom contain useful contemporaneous information regarding a defendant's mental state at the time of trial and his ability, at that time, to understand the nature of the proceedings and assist in his defense." People v. Ary, 13 Cal. Rptr. 3d 482, 493, 118 Cal. App. 4th 1016 (Cal. App. 2004). Such determinations encounter "inherent difficulties" even "under the most favorable circumstances." Drope, 420 U.S. at 183.

The circumstances here are far from favorable. The trial judge did not ask Heddrick any questions in determining his competence and proceeding to trial, which further reduces the prospect of a meaningful hearing at this late juncture. Furthermore, the trial court did not make any contemporaneous factual findings in support of its ultimate finding that Heddrick was competent.

By the time this Court decides Heddrick's case, nearly four years will have passed since Heddrick's trials. In Griffin, the court reversed conviction instead of ordering a retrospective competency hearing despite the existence of a contemporaneous medical report because "over three

years have passed since his trial and it seems impossible to now conduct a meaningful nunc pro tunc hearing." Griffin, 935 F.2d at 931; see also Dusky v. United States, 362 U.S. 402, 403, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (remanding for a new trial "in view of the doubts and ambiguities regarding the legal significance of the psychiatric testimony in this case and the resulting difficulties of retrospectively determining the petitioner's competency as of more than a year ago.").

In addition, there is no evidence in the record of a complete psychiatric evaluation conducted contemporaneous to the time of trial as mandated by RCW 10.77.060.⁷ The record only reveals Dr. White's oral conclusion, relayed by Lapps, that Heddrick was competent to stand trial in the harassment case. Dr. White did not produce a written report for the trial court's review. There is no description of the method by which Dr. White conducted the evaluation or how he arrived at his ultimate conclusion.

Even if this Court concludes a retrospective competency hearing might be possible, the remedy should be remand to allow the trial court to determine the feasibility of holding the hearing, rather than outright directing the trial court to hold one. Ary, 13 Cal. Rptr.3d at 493-94.

⁷ This Court denied a joint motion to supplement the appellate record with a competency report written in August 2005 by a Western State Hospital psychologist.

2. DENIAL OF COUNSEL AT A CRITICAL STAGE OF THE PROCEEDING IS STRUCTURAL ERROR REQUIRING AUTOMATIC REVERSAL.

Reversal is required because Heddrick was denied counsel when the trial judge determined his competency to stand trial in the assault case.

A defendant is constitutionally guaranteed the right to the assistance of counsel at every critical stage of a criminal prosecution. United States v. Cronin, 466 U.S. 648, 658-59, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984); State v. Everybodytalksabout, 161 Wn.2d 702, 708, 166 P.3d 693 (2007). The Court of Appeals recognized a competency hearing is a critical stage. Slip op. at 15; Appel v. Horn, 250 F.3d 203, 215 (3d Cir. 2001); Sturgis v. Goldsmith, 796 F.2d 1103, 1109 (9th Cir. 1986), cert. denied, 508 U.S. 918, 113 S. Ct. 2362, 124 L. Ed. 2d 269 (1993).

According to the Court of Appeals, the trial court's determination that Heddrick was competent in the assault case was not a critical stage because the court failed to hold a separate hearing to address competency in that case, even though the court indisputably entered an order finding Heddrick competent in that case when Heddrick's counsel was absent. Slip op. at 15-16. The Court of Appeals' reasoning is flawed. Had the trial judge conducted an evidentiary hearing in the assault case as required by due process, there would be no question that counsel's presence would be constitutionally required.

Even if a separate hearing for the assault case was not constitutionally required, it is undisputed the trial court entered an order finding Heddrick competent in the assault case when Heddrick's counsel was absent. The fact that the trial court did not formally divide its determination of competency in the assault and harassment cases into separate hearings does not make the determination of competency in the assault case any less critical. Critical stages are those steps of a criminal proceeding that hold significant consequences for the accused. Bell v. Cone, 535 U.S. 685, 695-96, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002). "For the defendant, the consequences of an erroneous determination of competence are dire" because he may be unable to exercise rights deemed essential to a fair trial. Cooper v. Oklahoma, 517 U.S. 348, 354, 364, 116 S. Ct. 1373, 134 L. Ed. 2d 498 (1996).

"Once a competency hearing is held . . . a defendant is entitled to the assistance of counsel." Medina, 505 U.S. at 450. "If no actual 'Assistance' 'for' the accused's 'defence' is provided, then the constitutional guarantee has been violated." Cronic, 466 U.S. at 654 (quoting U.S. Const. amend VI). Here, the record does not show Marcus Naylor, Heddrick's counsel for the assault case, provided any assistance when it came time to determine Heddrick's competency to stand trial. Not only was counsel absent when the trial judge determined Heddrick was

competent, he did not even participate in the preceding telephonic conference in which Lapps first informed the judge that Dr. White had concluded Heddrick was competent.

The Court of Appeals maintained Heddrick cannot establish prejudice from the absence of counsel. Slip op. at 16. A defendant is denied his constitutional right to counsel when counsel is "either totally absent, or prevented from assisting the accused during a critical stage of the [criminal] proceeding." Cronic, 466 U.S. at 659 n.25. Prejudice is presumed from such error and appellate courts do not conduct a harmless error analysis in that circumstance. Id. at 658-59, 659 n. 25. The Court of Appeals' position directly conflicts with established precedent that constitutional errors amounting to structural defects in the trial process defy harmless error analysis and require automatic reversal "because they undermine the framework of the trial process itself, their effect cannot be ascertained without resort to speculation, or the question of harmlessness is irrelevant based on the nature of the right involved." State v. Watt, 160 Wn.2d 626, 632, 160 P.3d 640 (2007).

As recognized by this Court over forty years ago, "[t]he right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." State v. Cory, 62 Wn.2d 371, 376, 382 P.2d 1019 (1963)

(quoting Glasser v. United States, 315 U.S. 60, 76, 62 S. Ct. 457, 467, 86 L. Ed. 680 (1942)). Denial of counsel at a critical stage requires automatic reversal without inquiry into prejudice. Bell, 535 U.S. at 695. Heddrick's assault conviction must therefore be reversed.

D. CONCLUSION

Heddrick requests that this Court reverse the decision of the Court of Appeals, reverse his convictions, and remand for new trials.

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Respectfully submitted,

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