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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0230**

State of Minnesota,  
Plaintiff,

vs.

Paul Merrill Anderson,  
Defendant.

**Filed April 21, 2009  
Certified question answered in the negative  
Collins, Judge\***

Ramsey County District Court  
File No. K1-06-4295

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and  
Collins, Judge.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## **UNPUBLISHED OPINION**

**COLLINS, Judge**

In this certified-question appeal, appellant challenges the district court's order resuming his bifurcated mental-illness-defense trial with a new jury at the start of the second, mental-responsibility phase of the trial. To conform to our policy of answering with an unqualified yes or no, we reformulate the district court's certified question as follows:

When criminal proceedings are suspended and the jury discharged during the mental-responsibility phase of a bifurcated mental-illness-defense trial because the defendant is found to be incompetent, and the defendant is subsequently restored to competency, must the criminal proceedings be resumed from the beginning of the guilt phase of the trial?

We answer the certified question in the negative and remand for resumption of the criminal proceedings consistent with this opinion.

### **FACTS**

On the morning of November 9, 2006, appellant Paul Anderson boarded a Metro Transit bus. He began acting very strangely, and all of the other passengers got off the bus. Anderson then approached the driver from behind and began to choke her with a bandana that he placed around her neck. He then commanded the bus driver to drive on, threatening her with death if she did not comply. Over the next few minutes, Anderson exhibited other bizarre behaviors until the driver was able to stop the bus and Anderson was taken into custody by waiting officers. Anderson subsequently was charged with

kidnapping, in violation of Minn. Stat. § 609.25, subd. 1(2) (2006). Anderson pleaded not guilty and asserted a mental-illness defense.

In jail, following his arrest, Anderson continued to exhibit bizarre behaviors. He initially refused to take medications because “God is [his] psychiatrist.” (Alteration in original.) Once he was administered medication, Anderson quickly stabilized and no longer exhibited psychotic symptoms. But after a few months Anderson stopped taking his medication because he believed that it was neither “helping [n]or hindering” him and that he slept better without it. Anderson was released from jail in April 2007. Following a brief stay with his sister, Anderson resided at the Re-Entry House, a mental-health facility.

Prior to trial, the district court ordered a competency evaluation to determine whether Anderson was able to proceed. Minn. R. Crim. P. 20.01, subds. 2-3. The evaluator noted that Anderson has a long history of acute mental illness, including diagnosed conditions of paranoid schizophrenia, schizoaffective disorder, and bipolar disorder. Over the past two decades, he has suffered a number of psychotic episodes resulting in psychiatric hospitalization and civil commitment. Although Anderson’s mental illnesses appear to be adequately controlled when he is properly medicated, the evaluator noted that Anderson’s psychotic episodes “have followed a relatively predictable pattern” characterized, in part, by refusing to take his antipsychotic medication. The evaluator concluded that Anderson, despite not being medicated at the time, was competent to stand trial because he has “maintained mental stability, free from known psychotic symptoms, for almost two months.” However, the evaluator also

cautioned that, in light of Anderson's history of relapse, "it is likely that he will experience a resurgence of symptoms in the future without medication management." And although this possibility did not affect her opinion that Anderson possessed the necessary cognitive ability to participate in his trial, the evaluator warned that "his unwillingness to take medication may compromise his ability in the future," and she recommended that he resume medication.

Based on this evaluation, the district court found Anderson competent to proceed. At the conclusion of the guilt phase of his bifurcated jury trial, Anderson was found guilty of kidnapping as charged. Several days into the mental-responsibility phase of the trial, however, the court learned that over the weekend Anderson sought emergency-room treatment relative to his pre-existing diabetes and was hospitalized. Staff had observed Anderson exhibit a variety of bizarre behaviors, including walking around naked, acting inappropriately toward female staff, denying that he is a diabetic and refusing to accept insulin, and twice attempting to abscond from the emergency room. Anderson also refused to accept medication to control his psychotic condition, telling the emergency room physician that he did not have a mental illness and "was on no medications."

In light of these developments, the district court temporarily recessed the trial and ordered another evaluation to be performed by the same psychiatrist who initially evaluated Anderson's competency. *See* Minn. R. Crim. P. 20.01. The evaluator noted that, although Anderson indicated that he had complied with his psychiatric medications while at Re-Entry House, treatment records indicated that he was not compliant; indeed, records indicated that Anderson had become "very aggressive" towards other residents,

and was “yelling and screaming and destroying property in the house.” When questioned by the evaluator about having refused his medications, Anderson referred to this as a “party of lies” and attempted to walk out. Anderson also denied being mentally ill and stated that he wanted to proceed with the trial. The evaluator found Anderson to be “grossly psychotic” and incapable of participating in the criminal proceedings, about which he held various delusional beliefs. The evaluator concluded that Anderson’s relapse was a product of stress from the trial in conjunction with his refusal to take his medication. The district court adopted the evaluator’s findings, suspended the criminal proceedings, and discharged the jury. *See id.*, subd. 4(2). Anderson remained hospitalized for further psychiatric treatment.

Six months later, based on an updated report, the district court found that Anderson’s mental condition had been stabilized and his competence restored. The district court ordered the resumption of the criminal proceedings. *See id.*, subd. 5. The state contended that Anderson’s bifurcated trial should resume at the start of the mental-responsibility phase. Anderson, however, maintained that his bifurcated trial should be resumed from the very beginning—at the start of the guilt phase. Because the rules of criminal procedure offer no guidance beyond directing the resumption of the criminal proceedings, after ordering the resumption of Anderson’s trial with a new jury to begin at the start of the mental-responsibility phase,<sup>1</sup> the district court certified the question, which we reformulated.

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<sup>1</sup> Initially, the district court certified the question and stayed proceedings without ruling on the issue. Because we will not accept certified questions that have not first been ruled

## DECISION

Under the rules of criminal procedure, the district court may certify “any question of law . . . which in the opinion of the judge is so important or doubtful as to require a decision of the Court of Appeals.” Minn. R. Crim. P. 28.03. Before certifying a question, the district court must specify the precise legal question for review. *State v. Saunders*, 542 N.W.2d 67, 69 (Minn. App. 1996). We may rephrase this question, however, in order to clarify or narrow the legal issue for review or to reformulate in a way that conforms to our policy of answering it with an unqualified “yes” or “no.” *Minn. Citizens Concerned for Life, Inc. v. Kelley*, 698 N.W.2d 424, 429-30 (Minn. 2005). Here, we have done so to ask:

When criminal proceedings are suspended and the jury discharged during the mental-responsibility phase of a bifurcated mental-illness-defense trial because the defendant is found to be incompetent, and the defendant is subsequently restored to competency, must the criminal proceedings be resumed from the beginning of the guilt phase of the trial?

The certified question requires us to interpret the provisions of the rules of criminal procedure governing the suspension and resumption of criminal proceedings based on a defendant’s mental competency. The construction and application of a rule of criminal procedure presents a question of law, which we review de novo. *State v. Lee*, 706 N.W.2d 491, 493 (Minn. 2005).

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on by the district court, *State v. Braun*, 354 N.W.2d 886, 887 (Minn. App. 1984), a special-term panel of this court dismissed the original certified question. The district court then ordered the trial’s resumption and re-certified the question we now address.

A defendant's constitutional right to not be tried while incompetent persists throughout the entire trial, as competency goes to whether the defendant is mentally "present" at his own trial. *Drope v. Missouri*, 420 U.S. 162, 171-72, 95 S. Ct. 896, 903-04 (1975). Thus, even when a defendant is competent when the trial starts, the district 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." *Id.* at 181, 95 S. Ct. at 908. Failure to observe procedures that protect this right deprive the defendant of due process. *Id.* at 172, 95 S. Ct. at 904. In felony cases, the rules of criminal procedure provide this protection by initially pausing the proceedings for an evaluation of competency when the district court determines that there are doubts as to a defendant's competency and then suspending the criminal proceedings indefinitely if the defendant is found incompetent to proceed. Minn. R. Crim. P. 20.01, subds. 2, 4(2).

After criminal proceedings against a mentally ill defendant have been suspended and the defendant is civilly committed, the district court exercises supervisory jurisdiction over the commitment, and the institution to which the defendant is committed must periodically report back to the district court regarding the defendant's competency. Minn. R. Crim. P. 20.01, subds. 4(2)(a), 5. If the district court later determines, after a hearing, that the defendant is competent to proceed, "the criminal proceedings against the defendant shall be resumed." *Id.*, subd. 5.

Here, Anderson both pleaded not guilty and asserted a mental-illness defense, necessitating a bifurcated trial. *See* Minn. R. Crim. P. 20.02, subd. 6(2) (describing procedure upon not-guilty plea coupled with mental-illness defense). During the first

phase of such trial, as in any other criminal trial, the state must secure a guilty verdict or the defendant is entitled to a judgment of acquittal. *State v. Brink*, 500 N.W.2d 799, 802 (Minn. App. 1993). If the defendant is found guilty, the trial proceeds to the second phase during which the defendant attempts to establish that he is not responsible for having committed the offense by reason of mental illness. *Id.* at 802-03. Here, following the guilt phase of the trial, the jury found beyond a reasonable doubt that Anderson had committed the offense of kidnapping as charged. The trial then proceeded to the mental-responsibility phase, in the midst of which Anderson's competency was called into question and the trial was paused. Based on the ensuing evaluation, the district court adjudged Anderson incompetent, indefinitely suspended the criminal proceedings, and necessarily discharged the jury. Now that Anderson has been restored to competency, it is clear that "the criminal proceedings against [him] shall be resumed." Minn. R. Crim. P. 20.01, subd. 5. But from what point shall they be resumed? Anderson argues that his new trial with a new jury must revert to the beginning and resume at the start of the guilt phase, while the state urges us to affirm the district court's order for resumption of the trial at the start of the mental-responsibility phase after impaneling a new jury. The issue is one of first impression.<sup>2</sup>

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<sup>2</sup> Nationally, few cases address the question of "resuming" proceedings after a midtrial finding of incompetency. *See generally* James Fife, *Restarting Criminal Proceedings after Restoration of Defendant's Competence*, 27 T. Jefferson L. Rev. 93, 100-01 (2004) (discussing scant caselaw on the issue). None of those cases is more than tangentially relevant, however, because none of them was decided in the bifurcated-trial context as is the case here.



We answer the certified question in the negative because *it may not be necessary to resume the criminal proceedings from the beginning of the guilt phase of the trial*. This answer, however, presupposes a specific finding that Anderson was competent to stand trial through the conclusion of the guilt phase. As Anderson points out, it is possible for a defendant to have become actually incompetent before being formally adjudged as such, especially if the defendant's history and diagnoses suggest that the initial manifestations of his incompetence might have been insufficiently overt to be noticed immediately. See James Fife, *Restarting Criminal Proceedings after Restoration of Defendant's Competence*, 27 T. Jefferson L. Rev. 93, 99-100 (2004). And regardless of when the condition rendering a defendant incompetent is first realized and raised, the defendant's due-process right to not be subjected to trial while incompetent cannot be waived. See *Pate v. Robinson*, 383 U.S. 375, 384, 86 S. Ct. 836, 841 (1966) (stating that right to not be tried while incompetent is nonwaivable because incompetent defendant, by definition, cannot make a knowing, intelligent, and voluntary waiver). Thus, if the district court finds that Anderson had become incompetent during the trial before the jury reached its guilt-phase verdict,<sup>3</sup> that verdict is invalid. And if the predicate guilt-phase verdict is invalid, criminal proceedings cannot constitutionally be resumed at the start of the mental-responsibility phase.

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<sup>3</sup> We acknowledge that the nature of competency may make such retrospective determination difficult. However, the district court is not required to determine the precise moment that Anderson became incompetent to stand trial, only whether it had occurred before the guilt-phase verdict was rendered. In future cases, we urge district courts to make contemporaneous findings before suspending the criminal proceedings.

When certifying the question presented, the district court focused on the trial phase during which Anderson was formally found to be incompetent but the court had not made a finding as to when Anderson became incompetent to stand trial. Anderson went from being unmedicated yet stable at the trial's outset to being "grossly psychotic" only a few days after the guilt phase concluded. Thus, the district court may find that there were initial symptoms of his relapse during the guilt phase that were sufficiently subtle as to go unnoticed but sufficiently serious as to have rendered Anderson legally incompetent, constitutionally invalidating the jury's guilt-phase verdict. On the other hand, it may be found that Anderson's incompetency indeed began with the psychotic episode several days into the mental-responsibility phase of his trial, in which case the jury's guilt-phase verdict was constitutionally valid. On remand, therefore, the district court must first determine when Anderson *became* incompetent—enlarging on when he was formally *found* incompetent.

In the event the district court finds that Anderson was competent throughout the guilt phase, it still must select a trial phase at which to resume the proceedings. Anderson advocates a *per se* rule requiring resumption from the start of the guilt phase, arguing that the two phases are both parts of a single continuous trial, which was incomplete because the jury was dismissed before reaching a dispositive verdict. Conversely, the state advocates a *per se* rule requiring resumption from the start of the mental-responsibility phase, arguing that the jury's guilt-phase finding that the defendant committed the offense is "an accepted fact, not to be attacked collaterally." *See State v. Dodis*, 314 N.W.2d 233, 241 (Minn. 1982).

We reject both arguments and instead leave the matter to the district court's sound discretion in determining a fair, logical, and practical starting point. A bifurcated mental-illness-defense trial has both continuous and discrete aspects. As the state points out, such trials can be seen as effectively "two separate trials on two distinct issues." *Id.* At the same time, however, there is typically a substantial evidentiary overlap that presupposes a mental-responsibility-phase jury's exposure to the evidence adduced during the guilt phase. *See Davis v. State*, 595 N.W.2d 520, 527 (Minn. 1999) (noting that in deciding whether mental illness prevented defendant from understanding wrongness of his actions, jury may consider guilt-phase evidence of events surrounding the crime itself). And where, as here, an entirely new jury must be impaneled, the district court must afford the defendant a full opportunity to present the evidence necessary to enable the new jury to "take account of the entire man and his mind as a whole." *See State v. Rawland*, 294 Minn. 17, 46, 199 N.W.2d 774, 790 (1972) (quotation omitted) (noting that such evidence "should be received freely" during the guilt phase).<sup>4</sup> Whether, in such case, this is best accomplished by resuming the trial from the very beginning or by permitting the reintroduction of the relevant guilt-phase evidence during the resumed mental-responsibility phase should be decided by the district court on a case-by-case

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<sup>4</sup> In this light, the state's reliance on *Dodis* is misplaced. There, the supreme court held that an alternate juror who had not participated in deliberations for the guilt phase could nevertheless substitute for an original juror during deliberations for the mental-responsibility phase of the bifurcated trial. *Dodis*, 314 N.W.2d at 241. Even though the alternate juror had not participated in the deliberations establishing the defendant's guilt as a conclusive fact, he had been present for the entire trial. *Id.* Unlike a new mental-responsibility-phase-only jury, therefore, the alternate juror would have heard the same evidence as the jurors who participated in the guilt-phase deliberations.

basis. But here, without the predicate finding that Anderson was competent to stand trial throughout the guilt phase of his trial, we cannot definitively review whether the district court abused its discretion by ordering Anderson's trial to resume at the start of the mental-responsibility phase.

**Certified question answered in the negative.**