

**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

**DISTRICT COURT**  
**FOURTH JUDICIAL DISTRICT**  
**CRIMINAL DIVISION**

State of Minnesota,

Court File No. 27-CR-23-12360

Plaintiff,

vs.

Alexander Orval Thomley,

Defendant.

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW**  
**AND ORDER REGARDING**  
**COMPETENCY**

This matter came before the undersigned Judge of District Court on July 25, 2023. The hearing was held remotely using the Zoom internet platform. Tom Arneson, Assistant Hennepin County Attorney, represented the plaintiff. Defendant did not appear and was represented by Susan Herlofsky, Assistant Hennepin County Public Defender.

Based on all the files, records and proceedings in this case, the Court makes the following:

**FINDINGS OF FACT**

1. Defendant (date of birth 11/09/1996), was charged with 2<sup>nd</sup> Degree Assault (Felony) arising from an incident alleged to have occurred on June 12, 2023. On June 15, 2023, Judge Michael Burns found probable cause to believe that the offense was committed and that Defendant committed it.
2. On June 15, 2023, Judge Michael Burns ordered that Defendant undergo an evaluation to assess Defendant's competency to proceed in this matter pursuant to Minn.R.Crim.P. 20.01.
3. Dr. Jennifer Flowers, Ph.D., L.P., Psychological Services of Hennepin County District Court, reviewed Defendant's records, interviewed Defendant, and filed a written report with this Court.
4. Dr. Jennifer Flowers, Ph.D., L.P., Psychological Services of Hennepin County District Court, opined that Defendant, due to mental illness or cognitive impairment, lacks the ability to rationally consult with counsel; or lacks the ability to understand the proceedings or participate in the defense. This opinion was uncontested by either party.

## **CONCLUSIONS OF LAW**

Defendant is presently incompetent to stand trial.

## **ORDER**

1. The criminal proceedings in this matter are suspended until Defendant is restored to competency to proceed. While suspended, the criminal court retains authority over the criminal case including, but not limited to, bail or conditions of release.
2. Copies of this Order shall be served upon counsel for the parties and any objections to this Order shall be filed with the Court within ten (10) days of the date of service.

Evan Powell, Assistant Hennepin County Attorney – Criminal Division;

Susan Herlofsky, Assistant Hennepin County Public Defender

3. The Hennepin County Prepetition Screening Program (PSP) must conduct a prepetition screening pursuant to the Minnesota Commitment and Treatment Act and make a recommendation as to whether the defendant should be civilly committed under the Act.
4. PSP shall investigate whether civil commitment should be pursued and forward a recommendation in a written report supporting or not supporting civil commitment to the Hennepin County Attorney's Office – Adult Services Division ("HCAO-ASD") within five (5) days of receiving this Order.
5. Prepetition Screening shall provide copies of the Rule 20 Competency Evaluation, the criminal Complaint(s), and the underlying police report(s) along with its written recommendation to the Hennepin County Attorney's Office – Adult Services Division.
6. Defendant is ordered to cooperate with the civil commitment process including appearing at all court appearances in the civil and criminal cases.
7. Members of PSP shall have access to all Defendant's files and records, including those protected by Federal regulation or law. This Order grants the members of PSP access to the records of any individual or entity that has provided observation, evaluation, diagnosis, care, treatment, or confinement of the Defendant. This Order applies to, but is not limited to, records maintained by: Minnesota Fourth Judicial District Court Psychological Services; chemical dependency evaluators and treatment providers; health clinics; medical centers and hospitals; physicians; psychologists; mental health care providers; case managers; parole and probation agencies; residential and nonresidential community mental health treatment facilities or

programs; regional treatment centers; the Minnesota Department of Corrections; the correctional authority for any other state; schools and school districts; law enforcement agencies; and the Court's own records.

8. This Order also authorizes employees or officers of the record keepers described above to discuss the Defendant's condition, history, treatment, and/or status with the members of PSP. Information collected by PSP pursuant to this Order shall be considered private data on the Defendant, but it may be included in the written report produced by PSP and forwarded to the HCAO-ASD.
9. If the Fourth Judicial District Court – Probate/Mental Health Division finds the Defendant to be mentally ill, developmentally disabled, chemically dependent, or mentally ill and dangerous to the public, the Defendant may be committed directly to an appropriate safe and secure facility. The Hennepin County Sheriff shall transport the Defendant from the Hennepin County Adult Detention Center to the custody of the head of the facility named in the order for civil commitment when notified that placement is available for the Defendant.
10. The head of the treatment facility shall submit a written report addressing the Defendant's competency to proceed in the criminal case when the Defendant has attained competency, or at least every six months.
11. Psychological Services of Hennepin County District Court, or the Department of Human Services Forensic Evaluation Department if the defendant is civilly committed, shall have access to Defendant's treatment records to prepare the required report(s) on the defendant's mental condition with an opinion as to competency to proceed. By presentation of a copy of this order, whether mailed, sent electronically, discussed verbally, or personally delivered, the custodian of records for any agency, department, or health care provider shall release all information and/or records related to Defendant, including medical, psychological, behavioral, social service, probation/correctional, developmental disability, military, Social Security, employment, and educational records, to the agency requesting the records within 72 hours. This Order shall be sufficient to require an agency, department, entity, or health care provider to release the requested information and/or records related to treatment Defendant has received in connection with that facility. Any of the defendant's records released pursuant to this order may not be disclosed to any other person without court authorization or Defendant's signed consent.

12. The criminal conditions of release remain in effect until placement at an appropriate facility can occur.
13. If Defendant is not subject to the provisions of Minn. Stat. § 253B.18, the head of the treatment facility shall hold Defendant safe and secure under the civil commitment, and shall not permit the Defendant's release, institutional transfer, partial institutionalization status, discharge, or provisional discharge of the civil commitment until the Fourth Judicial District Court – Criminal Division has ordered conditions of release consistent with the proposed change in status. Any proposed change in status under the civil commitment requiring amended conditions of release shall be made in writing to the Fourth Judicial District Court – Criminal Division and parties at least 14 days prior to proposed change in status. The written proposal shall address the following issues 1) whether the Defendant is competent to proceed; 2) how the proposed plan will meet the Defendant's treatment needs; and 3) public safety risks and how they will be addressed. Either party may request a hearing to address the proposed changes to the conditions of release. If no hearing is requested, the court may issue an order amending the conditions of release consistent with the proposed change in status in the civil commitment matter.
14. In the event the Fourth Judicial District Court – Mental Health Division does not commit the Defendant, then the Defendant shall be transported in secure custody back to the Fourth Judicial District Court – Criminal Division for further proceedings herein.
15. Defendant's next appearance in Hennepin County District Court – Criminal Division on this matter and status review of Defendant's competence to proceed is January 23, 2024. One week prior to that date, reports regarding Defendant's competency and mental status shall be e-filed and e-served to:
  - a. Fourth Judicial District Court – 4thCriminalRule20 email list;
  - b. Susan Herlofsky, Assistant Hennepin County Public Defender;
  - c. Evan Powell, Assistant Hennepin County Attorney;
  - d. Assistant Hennepin County Attorney's Office – Adult Services Division (if a commitment is ordered);
  - e. The Commitment Defense Panel attorney appointed to represent Defendant by the Fourth Judicial District Court – Probate/Mental Health Division.

16. A copy of this Order, the Rule 20.01 Competency Evaluation, the criminal complaint(s), and the underlying police report(s) shall be delivered via email to the Prepetition Screening Program of Hennepin County's Human Services and Public Health Department.

**BY THE COURT:**

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Judge of District Court

MINNESOTA  
JUDICIAL  
BRANCH