

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

AARON DASHAUN CHERRY,

Defendant.

**STATE'S MEMORANDUM TO
RECONSIDER THE FINDING OF
COMPETENCE**

MNCIS No.: 27-CR-23-3198

C.A. File No: 23A01579

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**TO: THE HONORABLE JUDGE MICHAEL BROWNE JUDGE OF DISTRICT COURT
AND DEFENDANT, BY AND THROUGH HIS ATTORNEY, CHELSEA KNUTSON.****INTRODUCTION**

AARON DASHAUN CHERRY, Defendant herein, is charged with Felony Violation of a No Contact Order and Domestic Assault Felony. Upon his motion, Defendant performed a rule 20.01 evaluation to determine his mental competency to stand trial. The findings of that evaluation were released on April 4, 2023, finding that Defendant was competent to stand trial. Defendant later requested a second evaluation. The findings of that evaluation were released on August 31, 2023. That evaluation also found the Defendant competent. The Defendant then requested a contested competency hearing where the second evaluator and Defense Attorney testified. After this hearing Referee Skibbie found the Defendant not competent. The State now argues that the conclusions should be set aside this Court must make a finding of competent consistent with the two evaluations done in this case. The State submits this memorandum in support of that motion.

FACTS

The State agrees with the facts and procedural history as written in Referee Skibbie's order.

ARGUMENT

“A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense due to mental illness or deficiency.” Minn. R. Crim. P. 20.01, subd. 2. Where a defendant’s competency is disputed, the rule provides that, in the absence of proof of the defendant’s competence by a preponderance of the evidence, a court must find the defendant incompetent. *Id.*, subd. 5.¹ “This directive, in effect, creates a presumption of incompetence.” *State v. Curtis*, — N.W.2d —, 2018 WL 6626496, at *6 (Minn. Dec.19, 2018). The burden is on the State to prove by a preponderance of the evidence that a defendant is competent. *See, e.g., id.* at *5; *State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007); *State v. Mills*, 562 N.W.2d 276, 281 (Minn. 1997). Evidence of the defendant’s irrational behavior, demeanor at trial, and any prior medical opinion on competence to stand trial are relevant in determining whether there is reason to doubt the defendant’s competence. *State v. Camacho*, 561 N.W.2d 160, 172 (Minn. 1997) (citing *Drope v. Missouri*, 420 U.S. 162, 180 (1975)).

The Defendant has had two competency examinations in this proceeding, neither of which have found him incompetent or provided diagnosis of mental illness that would allow for a finding of incompetency. The Judge may consider these reports as evidence. The second report was accepted by Referee Skibbie as an exhibit. This report adopts the findings of the first report. Referee Skibbie in their finding of incompetence relied on the testimony of the Defense Attorney and the testimony of one of the evaluators in finding that the Defendant has mutism. Mutism is an anxiety disorder that effects ones ability to speak in stressful or anxiety inducing situations

¹ Although the plain language of subdivision 5 does not explicitly place the burden of proving competence on the State, it does so by implication. *See Curtis*, 2018 WL 6626496, at *5.

but does not effect one's ability to understand the world around them. On page 10 of his report, Dr Coffin writes, "Mutism is not a feature of any MI besides Schizophrenia and Catatonia. These diagnoses were never noted in the available records and the Defendant does not have additional symptoms consistent with either diagnosis." Dr. Coffin on page 4 of his report states that the Defendant had never raised mental illness concerns on visits to hospitals. This is significant given the use of Defendant's present refusal to communicate and the interpretation that this represents a mental illness that rises to the level of incompetence. When discussing the issue of mutism in the most recent evaluation, Dr. Herbert states on page 16 that, "{m}utism alone is not sufficient to render an individual incompetent". Dr. Herbert in that section goes on to describe how there are 12 features that need to be present to diagnose Catatonia-mutism is one feature but requires the other 11 features which are not present for the Defendant.

The first competency evaluation in this case found the Defendant to be malingering. In that report, Dr. Coffin also notes that a previous evaluator also found that Mr. Cherry was competent and malingering in 2022. The second examiner in this case, testified that she only spoke with Mr. Cherry for about five minutes over zoom and did not perform any tests. After the short meeting she found it was not worth proceeding further due to his not engaging meaningfully with the meeting. He however did respond to her when he showed his wrist band to identify himself rather than identifying himself verbally. This evaluator in her report and on the stand did not make a full finding of competent or incompetent. She did not disagree with any of the findings in the previous report. Her report largely adopts the previous findings of Dr. Coffin. In her testimony she opined that she felt he was in the direction of incompetence but was not willing to make a full finding in either direction because of the limited time she spent with the client and based most of her findings on the original report finding malingering. Referee Skibbie relied heavily on the testimony of the second evaluator and the Defense attorney in this case,

however a full reading of both evaluations is needed. More weight should be given to the opinions in both the reports made after the two competency evaluations done in this case in the last year.

Based on the evidence available, there is no evidence that the mutism is based on any mental health diagnosis. There is no evidence to suggest that Defendant is not malingering as the first evaluator found and the second evaluator did not contest. There is only evidence that the Defendant does not communicate adequately with his attorney and did not communicate with the most recent evaluator. A finding of incompetence at this juncture serves to encourage defendants going forward to remain selectively mute in an attempt to be found incompetent. There is presently no evidence that the Defendant cannot understand the legal proceedings or charges against him, only evidence that he will not communicate regarding legal issues.

CONCLUSION

There is clear evidence contained in both of the Defendant's evaluations that he is malingering and mute but not incompetent to stand trial. While Defendant does have some challenges that have proved to be roadblocks in his life, they do not rise to the level of incompetence. For the reasons stated above, the State requests that this Court reconsider the previous finding of incompetence.

Respectfully submitted,

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