

State of Minnesota

District Court

County of Hennepin

Fourth Judicial District

State of Minnesota,
Plaintiff,Judge Lisa K. Janzen
Case Type: Criminal

v.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING DEFENDANT'S
COMPETENCY TO PROCEED**Adrian Wesley,
Defendant.Case Numbers: 27-CR-17-1555
27-CR-17-22909
27-CR-17-8342

The above-entitled matter came before Lisa K. Janzen, Judge of District Court, on February 10, 2020, for an evidentiary hearing upon the Defense's objection to the competency opinion rendered by Dr. Jason Lewis, dated October 1, 2019. Amy Blagoev, Assistant Hennepin County Attorney, appeared for the State. Julius Nolen, appeared on behalf of the defendant who was personally present. Dr. Jason Lewis, PhD, LP, of State Operated Forensic Services testified and the court received his report dated October 1, 2019 and his Curriculum Vitae as exhibits. The court also took judicial notice of the five previous rule 20.01 evaluations filed in the case. The court took the matter under advisement on February 10, 2020. Based upon the arguments presented and all the files and records herein, the Court orders as follows:

1. Defendant is **INCOMPETENT** to proceed.

FINDINGS AND CONCLUSIONS

Rule 20.01 of the Minnesota Rules of Criminal Procedure requires the court to find that the defendant is not competent unless the greater weight of the evidence shows that the defendant is competent. Minn.R.Crim.P. Rule 20.01, subd. 5 (c). A defendant is not competent if, due to mental illness or cognitive impairment he is unable to "(a) rationally consult with counsel or (b) understand the proceedings or participate in the defense." *Id.*, subd. 2. The determination of whether a defendant is able

to rationally consult with the defense attorney or understand and participate in the proceedings turns on the facts of each particular case.

Mr. Wesley has been charged in file 27-CR-17-1555 with one count of Criminal Sexual Conduct in the 2nd Degree arising from an incident alleged to have occurred on January 15, 2017. He is also charged in file 27-CR-17-22909 with one count of Assault in the 4th Degree from an incident alleged to have occurred on July 14, 2017. Finally, he is charged in file 27-CR-17-8342 with one count of Criminal Damage to Property in the First Degree for an incident alleged to have occurred on March 5, 2017. On January 20, 2017 Judge Jay Quam found probable cause on file 27-CR-17-1555 and ordered that a Rule 20.01 evaluation be completed. Dr. Kristen A. Otte, Psy.D. LP of Hennepin Psychological Services was assigned to complete the first 20.01 evaluation of the defendant. She filed her report on February 17, 2017. Dr. Otte opined that Mr. Wesley was incompetent and provided the following diagnoses:

1. Other Specified Neurodevelopmental Disorder (Associated with Prenatal Alcohol Exposure, formerly referred to as Fetal Alcohol Syndrome).
2. Intellectual Disability, Moderate
3. Unspecified Depressive Disorder

Dr. Otte indicated further information was required to determine whether Mr. Wesley met the diagnostic criteria for a psychotic disorder.

Dr. Otte noted Mr. Wesley's clinical presentation is complex due to his long standing and well-documented history of neurodevelopmental deficits and intellectual disabilities which contribute to problems with emotion regulation and behavioral control as well as his ability to communicate effectively about his thoughts and emotions. Mr. Wesley demonstrates a history of aggression and impulse control as well as sexually inappropriate behavior. Dr. Otte noted these issues are further compounded by his hearing impairment and that he requires the use of ASL interpreters to communicate and participate in evaluation interviews. Mr. Wesley's deficits are due to drug and alcohol exposure in-utero. Due to maternal abuse and neglect he was removed from his mother's care. His hearing loss is due to recurrent and untreated ear infections.

Dr. Otte indicated in her evaluation that Mr. Wesley's impairments result in significant deficits in planning and decision-making, reasoning, problem-solving, abstract thinking, emotion regulation, adaptive functioning and self-care. She opined that the deficits associated with his neurodevelopmental disorder and intellectual disability significantly interfere with his competency-related functioning. Dr. Otte opined that his prognosis for maintaining the requisite competency-related abilities is exceedingly poor. She noted his deficits and disabilities are chronic and long standing despite a long history of intensive support and intervention and wrote, "There is little likelihood that Mr. Wesley would be restored to competency in the foreseeable future."

On February 21, 2017, Judge Carolina Lamas entered findings of incompetency on all three of Mr. Wesley's files and referred him for screening for civil commitment. He was subsequently committed as Developmentally Disabled and Mentally Ill and Dangerous. The Department of Human Services placed him in the Minnesota Security Hospital - St. Peter where he continues to reside as a patient. Subsequently he has undergone four additional forensic evaluations conducted by Dr. Jason Lewis of State Operated Forensic Services. In each of the four subsequent evaluations, Dr. Lewis opined that Mr. Wesley was incompetent. Additionally, Dr. Lewis included a diagnoses of Unspecified Schizophrenia Spectrum and Psychotic Disorder.

In the most recent Rule 20.01 evaluation, filed on October 1, 2019, Dr. Lewis filed a report opining that Mr. Wesley has been restored to competency. Dr. Lewis noted that Mr. Wesley is psychiatrically stable and has been psychiatrically stable for the last couple evaluations. Dr. Lewis indicated Mr. Wesley demonstrates a lack of ongoing psychosis, he is alert, and his memory and thought processes are intact. Thus, Mr. Wesley's mental illness is not currently interfering significantly with competency issues. The questions the court must determine is whether Mr. Wesley's chronic cognitive deficits render him incompetent.

Dr. Lewis is a forensic examiner for State Operated Forensic Services and was previously the Clinical Director of the Competency Restoration Program. He testified that the Competency Restoration Program focuses on educating patients about the criminal legal process, including the roles of the parties in

the legal system, the trial process and possible sentences. They also discuss the evidence and facts in each patient's case. The goal is for the patients to understand the legal process sufficiently to be able to rationally consult with counsel and to be able to participate in their defense. The program consists of group class sessions and uses an assessment tool, consisting of one-hundred questions about the criminal process, to assist with a competency determination.

At the evidentiary hearing Dr. Lewis testified that the main factor he considered in his opinion that Mr. Wesley has been restored to competency was that Mr. Wesley had recently demonstrated an increased knowledge of legal concepts and facts related to his charges. Dr. Lewis testified the hospital had recently increased the frequency of Mr. Wesley's competency restoration sessions as compared to the prior evaluation review period. Dr. Lewis testified that Mr. Wesley is now able to discuss the evidence, facts and possible sentences of each of his cases individually. This is consistent with the restoration program's records which show substantial progress being made in the restoration groups he has been participating in. Dr. Lewis testified regarding Mr. Wesley's recent performance on the assessment tool. Below are examples of questions and responses given by Mr. Wesley noted during the hearing.

1. When asked whether he is obligated to accept a plea bargain Mr. Wesley responded, "Defendants have to take a plea bargain". Dr. Lewis testified he did consider this significant as it relates to competency.
2. Mr. Wesley was unable to understand the difference between a sentence to jail and a prison sentence. Dr. Lewis testified he did not consider this significant.
3. When asked to explain what not guilty by reason of mental illness means Mr. Wesley responded, "Maybe I did it but they are going to drop the charges". Dr. Wesley testified this response is inadequate but not significant.
4. Mr. Wesley was able to identify six basis rights rudimentarily.
5. Mr. Wesley answered one question, "If I plead not guilty the charge will be dropped".
6. Mr. Wesley was not able to answer some questions without being given clues and took a significant amount of time to answer many questions.

Dr. Lewis agreed that Mr. Wesley still demonstrates some deficits as it relates to competency, but that based on the totality of the data he is now able to communicate rationally with counsel and participate in his defense, with the caveat that defense counsel is encouraged to use simple language to explain the legal concepts and to identify multiple ways to describe complicated legal concepts. Dr. Lewis wrote, “Put another way, the ‘legalese’ that a layman with no mental illness or intellectual deficits would find confusing will be particularly challenging for Mr. Wesley, but he has demonstrated the ability to participate meaningfully in his defense when the discourse is simplified.” Dr. Lewis also made an additional recommendation that the sign language interpreter have a CDI certification, which means that the interpreter is also deaf and familiar with deaf culture. This type of interpreter is considered more able to accurately interpret and communicate. Dr. Lewis testified that the last time he met with Mr. Wesley was in September but that the notes he reviewed regarding progress between October and February indicated he has not decompensated. He also testified that if Mr. Wesley were to stop taking the competency restoration classes he would likely regress to incompetency.

At the evidentiary hearing attorney Susan Herlofsky testified that she is not the attorney of record for Mr. Wesley, but works at the public defender office with assigned counsel, Julius Nolen. She met with Mr. Wesley and assigned counsel prior to the hearing and sat at counsel table during the hearing. She testified in their conversation prior to the hearing Mr. Wesley did not understand what a trial was and was unable to understand the difference between a trial by jury and a court trial. He told defense counsel that he was proud that he “passed the test” at St. Peter hospital. Ms. Herlofsky testified at the end of the evidentiary hearing and stated that during the evidentiary hearing Mr. Wesley did not appear to understand the proceedings, had been unable to consult with counsel rationally or answer specific questions that counsel asked of him.

Based on the totality of the above noted facts, the court finds that the greater weight of the evidence demonstrates Mr. Wesley is not able to rationally consult with counsel or participate in his defense. While Mr. Wesley has demonstrated a basic understanding of the facts of his case and the legal process during his competency classes, this understanding appears to be rudimentary and fleeting. The court does not find

that this evidence demonstrates a cognitive ability to understand the legal concepts. Rather, it appears Mr. Wesley has been able to memorize definitions and terms due to repetition as a result of the high frequency of the competency classes he attends. This finding is further supported by Dr. Lewis's testimony that if Mr. Wesley were to discontinue competency restoration classes, he would likely soon regress to incompetency.

In order to rationally consult with counsel and participate in his defense, a defendant must have the cognitive ability, after consulting with counsel, to make important decisions about whether to accept a plea bargain, whether to have a jury or court trial and whether or not to testify. These decisions regarding the waiver of constitutional rights must be made by a defendant himself, after consulting with counsel. The defendant's attorney may not make these decisions for a defendant. While it appears Mr. Wesley now understands that he must behave properly in a courtroom setting and that he should follow the advice of counsel, simply indicating that he will "behave" in the courtroom and do what his lawyers tell him to do not establish that he is competent. His lack of understanding about whether he must accept a plea bargain and the difference between jail and prison is evidence that he is unable to participate in his defense. As noted by the psychologists, his cognitive impairments significantly interfere with his reasoning and decision making abilities. Most importantly, defense counsel's testimony that during the evidentiary hearing he demonstrated a lack of understanding about what a trial was and did not have the ability to consult with counsel or participate in his defense solidifies the court's conclusion that Mr. Wesley is incompetent.

Finally, it is important to take into consideration the recommendations of Dr. Lewis regarding suggested accommodations that can be made to assist Mr. Wesley in understanding the proceedings. Dr. Lewis indicates that Mr. Wesley does not have the ability to understand the "legalese" that a typical layman defendant would comprehend. His suggestion that defense counsel allot more time than customary, use simple language and explain legal concepts in multiple ways is prudent and the court does believe that defense counsel can implement these strategies. However, under the facts of Mr. Wesley's case, the court does not find that these accommodations are sufficient to render an otherwise incompetent defendant competent. Slowing down a legal proceeding by pausing or recessing to allow defense counsel to explain

every process, objection, argument or term used in witness testimony will not be sufficient to allow Mr. Wesley to comprehend the process, rationally consult with counsel and participate in his own defense. Dr. Lewis noted in his April 2019 evaluation that “if his competence-related deficits are primarily the result of intellectual deficits, his prognosis is likely to be poor.” The court finds that his competency related deficits are the result of his intellectual deficits. Although his factual understanding of his charges and the legal process has improved due to competency classes, the greater weight of the evidence does not establish that he has the rational ability to consult with counsel regarding trial strategy, make decisions regarding the waiver of constitutional rights and plea negotiations or otherwise participate in his defense.

The state has not met its burden of proving, by greater weight of the evidence that Mr. Wesley is competent. Therefore the court finds that the defendant, Mr. Wesley, is **INCOMPETENT**.

LKJ

By the Court:



Dated: 5/8/2020

Lisa K. Janzen
Judge of District Court

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