

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,	)	<u>FINDINGS OF FACT,</u>
	)	<u>CONCLUSIONS OF LAW</u>
Plaintiff,	)	<u>AND ORDER REGARDING</u>
	)	<u>COMPETENCY</u>
vs.	)	
	)	MNCIS No: 27-CR-20-20788;
Lawrence Joseph Durham,	)	27-CR-21-4577
	)	
Defendant.	)	

This matter came before the undersigned Judge on October 6, 2021. Jacob Fischmann, Assistant Hennepin County Attorney, represented the plaintiff. Derek Archambault represented the City of Robbinsdale. Defendant, who was in custody, was represented by Shira Burton, Assistant Hennepin County Public Defender. Parties agreed to waive their appearances.

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

FINDINGS OF FACT

1. Defendant (date of birth 8/21/70), was charged in MNCIS file 27-CR-20-20788 with Domestic Assault (Felony) and two counts of Domestic Assault (Misdemeanor) arising from an incident alleged to have occurred on 9/12/20; and in MNCIS file 27-CR-21-4577 with Violate Domestic Abuse No Contact Order (Misdemeanor) arising from an incident alleged to have occurred on 3/7/21. On 9/8/21, Judge Carolina Lamas found probable cause to believe that the offenses were committed and that Defendant committed them.
2. On 9/8/21, Judge Carolina Lamas 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. Kimberly Turner, 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. Kimberly Turner, 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. The misdemeanor charge(s) must be dismissed pursuant to Rule 20.01.

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 days of the date of service.

Jacob Fischmann, Assistant Hennepin County Attorney – Criminal
Division;

Derek Archambault, Robbinsdale City Attorney;

Shira Burton, 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; resident 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. The criminal conditions of release remain in effect until placement at an appropriate facility can occur.
12. 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.

13. 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.
14. Defendant's next appearance in Hennepin County District Court – Criminal Division on this matter and status review of Defendant's competence to proceed is April 5, 2022. One week prior to that date, reports regarding Defendant's competency and mental status shall be e-filed and e-served to:
15. Defendant's competency and mental status shall be e-filed and e-served to:
 - a. Fourth Judicial District Court – 4thCriminalRule20 email list;
 - b. Shira Burton, Assistant Hennepin County Public Defender;
 - c. Assistant Hennepin County Attorney's Office – Adult Services Division [if a commitment is ordered];
 - d. 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.

DATED: October 6, 2021

BY THE COURT:



Lisa K. Janzen
Judge of District Court
Fourth Judicial District