

**STATE OF MINNESOTA
COUNTY OF HENNEPIN****DISTRICT COURT
FOURTH JUDICIAL DISTRICT**

State of Minnesota,

Court File No. : 27-CR-23-1886

Plaintiff,

vs.

Matthew David Guertin,

Defendant.

**EXHIBIT N
FINDING OF FACT CONCLUSION
OF LAW COURT ORDERS**

Judicial Officer: Sarah Hudelston

TO: THE HONORABLE SARAH HUDLESTON, JUDGE OF DISTRICT COURT;
MARY F. MORIARTY, HENNEPIN COUNTY ATTORNEY; AND
MAWERDI HAMID, ASSISTANT HENNEPIN COUNTY ATTORNEY

**SYNTHETIC JUDICIAL SYSTEM EXPOSED
AI-DRIVEN DOCKET SIMULATIONS AND PSYCHIATRIC
DISPOSAL WITHIN THE 4TH JUDICIAL DISTRICT COURT**

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**Ifrah Abdull Hassan,
Defendant.Case Numbers: 27-CR-18-19274
27CR-20-423

The above-entitled matter came before Lisa K. Janzen, Judge of District Court, on August 6, 2020, for an evidentiary hearing upon the Defense's objection to the competency opinion rendered by Dr. Jason Lewis of State Forensic Services and filed with the court on April 13, 2020. Andrew Johnson, Assistant Hennepin County Attorney, appeared for the State. Lisa Skrzeczkoski, appeared on behalf of the Defendant, Ifrah Hassan, who was personally present. Jason Lewis, PhD, LP, of State Operated Forensic Services testified and the court received his report dated April 13, 2020 and his Curriculum Vitae as exhibits. The court also received, as Exhibit 1, a packet of 105 pages of documents, reports and evaluations reviewed by Dr. Lewis in completing his report. The court took the matter under advisement. Based upon the arguments presented and all the files and records herein, the Court orders as follows:

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

PROCEDURAL HISTORY AND FINDINGS OF FACT

In file number 27-CR-18-19274 Ms. Hassan is charged with one count of Threats of Violence arising from an incident alleged to have occurred on June 27, 2018. On 8/28/18 the court found Ms. Hassan incompetent to stand trial. Ms. Hassan was subsequently committed as Mentally Ill and Chemically Dependent. Findings of incompetency based on subsequent evaluations were also entered on this file in February 2019 and October of 2019.

Subsequently, Ms. Hassan was charged in file 27-CR-20-423 with 2nd Degree Aggravated Robbery from an incident alleged to have occurred on January 3, 2020. On January 7, 2020 probable cause was found and a Rule 20.01 evaluation was ordered. Dr. Shannon Garrity completed a 20.01 evaluation of the defendant which was filed February 12, 2020, opining that Ms. Hassan was not competent. Dr. Garrity noted previous diagnoses of Schizophrenia and Schizoaffective Disorder, as well as prior civil commitments, numerous hospitalizations and facility placements. Dr. Garrity noted that during the interview Ms. Hassan demonstrated unusual behaviors. While she appeared to understand basic aspects of her charges and courtroom proceedings, her disorganization of thought and difficulty tracking the content of the interview were of sufficient severity to render her incompetent to proceed. This finding was entered on February 18, 2020.

Ms. Hassan was again civilly committed and admitted to the State Forensic Mental Health Program (formerly Competency Restoration) on February 26th. Ms. Hassan responded favorably to psychotropic medication and participation in treatment groups during her hospitalization. Her psychiatric provider noted in late March that Ms. Hassan was psychiatrically stable and did not appear to be experiencing symptoms of psychosis or delusional ideation.

Dr. Lewis met with Ms. Hassan on April 7, 2020 at Forensic Mental Health Program. Due to the Pandemic, interpreter services were only available via a telephonic service. Over a two day period Dr. Lewis was unable to connect with this service. Ms. Hassan requested that the interview proceed without the services of an interpreter. During the interview Ms. Hassan's memory functioning appeared grossly intact and she did not present with impairment of attention or concentration. She did not demonstrate

difficulty tracking the discussion. Ms. Hassan acknowledged a history of auditory and visual hallucination and paranoid ideation but acknowledged that her symptoms of psychosis stopped when she began taking her medication. Dr. Lewis noted that she did not present with symptoms of psychosis, disorganized thought or delusional ideation. Dr. Lewis provided diagnoses of Schizoaffective Disorder and Substance Use Disorders. Dr. Lewis indicated Ms. Hassan demonstrated adequate factual understanding of the legal system and the charge against her. She also demonstrated an ability to rationally consult with her attorney. She was aware of the roles of courtroom personnel, trial procedures and her rights in the criminal justice system. She was unable to adequately define a plea bargain. She expressed a willingness to work with defense counsel. Dr. Lewis noted that her presentation during the April 2020 interview and his interview with her in September of 2019 was night and day. He noted he previously opined her incompetent in September of 2019. On April 13, 2020, Dr. Lewis filed a report with the court opining that Ms. Hassan had regained the capacity to proceed. He noted her competency is contingent upon continued compliance with psychotropic medication and abstinence from alcohol and drugs. He noted her history of absconding after being discharged into the community.

Subsequently DHS provisionally discharged Ms. Hassan to the community. Ms. Hassan's mental health decompensated rapidly after her release and she was re-hospitalized at Forensic Mental Health. After achieving psychiatric stability she was again discharged to the community and subsequently re-hospitalized. Believing that Ms. Hassan was no longer competent to proceed, defense counsel requested a contested hearing. The matter was set for a hearing on June 8th. However, this hearing was delayed due to the Pandemic, as Forensic Mental Health was unable to allow transport of Ms. Hassan to the Hennepin County Government Center for a hearing. Ms. Hassan was subsequently released to the community and a hearing was held on August 6, 2020.

During the hearing defense counsel, Lisa Skrzeczkoski, testified that since her release from Forensic Mental Health Ms. Hassan has been unable to remember conversations with her from the day before and overall has been unable to have rational discussion about her case. Ms. Skrzeczkoski testified that on the day of the hearing, in discussions with defense counsel, Ms. Hassan did not understand what

a witness was nor was she able to communicate what counsel had explained to her just minutes earlier. She testified the only thing Ms. Hassan can say when discussing her case is that her charge is “Aggravated Robbery with a maximum of 15 years and a \$30,000 fine.”

LEGAL 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.

The court concurs with Dr. Lewis that at the time his report was filed in April of 2020 Ms. Hassan likely was competent to proceed. However, since that time Ms. Hassan’s mental health has significantly decompensated such that she is presently not competent to proceed. Ms. Hassan was found incompetent by the courts over ten times between the years 2009 and 2016. Additionally since 2018 at least 4 competency evaluations have opined incompetent. She has been civilly committed multiple times, but historically has only been stabilized over short periods of time and rapidly decompensates once discharged into the community. Once in the community she is not compliant with her medication and resumes chemical use. Competency is fluid. It appears that since the filing of Dr. Lewis’s opinion in April of 2020 Ms. Hassan has not been compliant with psychotropic medication and has been re-hospitalized on multiple occasions. Additionally, the court finds defense counsel’s testimony persuasive that her client currently lacks the ability to rationally consult with her attorney and understand the legal proceedings.

Based on the totality of the above noted facts, the court finds that the State has not proven by the greater weight of the evidence that Ms. Hassan is competent. Rather, the court finds the greater weight of

the evidence demonstrates Ms. Hassan is not able to rationally consult with counsel or participate in her defense. Therefore the court finds that the defendant, Ms. Hassan, is **NOT COMPETENT**.

By the Court,

Dated: 9/4/2020



Lisa K. Janzen
Judge of District Court

MINNESOTA
JUDICIAL
BRANCH

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**Ifrah Abdull Hassan,
Defendant.Case Numbers: 27-CR-18-19274
27CR-20-423; 27-CR-21-5661

The above-entitled matter came before Lisa K. Janzen, Judge of District Court, on December 16, 2021, and January 28, 2022, for a competency hearing. Andrew Johnson, Assistant Hennepin County Attorney, appeared for the State. Lisa Skrzeczkoski appeared on behalf of the Defendant, Ifrah Hassan, who was personally present. Stephanie Bruss, Psy.D., LP, testified and the court received her report dated August 30, 2021 (Ex. 2) and her Curriculum Vitae (Ex. 1). The Defendant also provided the testimony of Dotti Lynch, Ms. Hassan's Behavioral Health Case Manager and the testimony Lisa Skrzeczkoski, defense counsel. The Court took the matter under advisement. Based upon the arguments presented and all the files and records herein, the Court orders as follows:

1. Defendant is **COMPETENT** to proceed.

PROCEDURAL HISTORY AND FINDINGS OF FACT

In file number 27-CR-18-19274 Ms. Hassan is charged with one count of Threats of Violence arising from an incident alleged to have occurred on June 27, 2018. On August 28, 2018, the Court found Ms. Hassan incompetent to stand trial. Ms. Hassan was subsequently committed as Mentally Ill and Chemically Dependent. Findings of incompetency based on subsequent evaluations were also entered on this file in February 2019 and October of 2019.

Subsequently, Ms. Hassan was charged in file 27-CR-20-423 with 2nd Degree Aggravated Robbery from an incident alleged to have occurred on January 3, 2020. On January 7, 2020, probable cause was found and a Rule 20.01 evaluation was ordered. Dr. Shannon Garrity completed a 20.01 evaluation of the defendant which was filed February 12, 2020, opining that Ms. Hassan was not competent. Dr. Garrity noted previous diagnoses of Schizophrenia and Schizoaffective Disorder, as well as prior civil commitments, numerous hospitalizations, and facility placements. Dr. Garrity noted that during the interview Ms. Hassan demonstrated unusual behaviors. While she appeared to understand basic aspects of her charges and courtroom proceedings, her disorganization of thought and difficulty tracking the content of the interview were of sufficient severity to render her incompetent to proceed. This finding was entered on February 18, 2020.

Ms. Hassan was again civilly committed and admitted to the State Forensic Mental Health Program (formerly Competency Restoration) on February 26, 2020. Ms. Hassan responded favorably to psychotropic medication and participation in treatment groups during her hospitalization. Her psychiatric provider noted in late March that Ms. Hassan was psychiatrically stable and did not appear to be experiencing symptoms of psychosis or delusional ideation.

Dr. Lewis met with Ms. Hassan on April 7, 2020, at the Forensic Mental Health Program. Due to the Pandemic, interpreter services were only available via a telephonic service. Over a two day period Dr. Lewis was unable to connect with this service. Ms. Hassan requested that the interview proceed without the services of an interpreter. During the interview Ms. Hassan's memory functioning appeared grossly intact and she did not present with impairment of attention or concentration. She did not demonstrate difficulty tracking the discussion. Ms. Hassan acknowledged a history of auditory and visual hallucination and paranoid ideation but acknowledged that her symptoms of psychosis stopped when she began taking her medication. Dr. Lewis noted that she did not present with symptoms of psychosis, disorganized thought or delusional ideation. Dr. Lewis provided diagnoses of Schizoaffective Disorder and Substance Use Disorders. Dr. Lewis indicated Ms. Hassan demonstrated adequate factual understanding of the legal system and the charge against her. She also demonstrated an ability to

rationality consult with her attorney. She was aware of the roles of courtroom personnel, trial procedures and her rights in the criminal justice system. She was unable to adequately define a plea bargain. She expressed a willingness to work with defense counsel. Dr. Lewis noted that her presentation during the April 2020 interview and his interview with her in September of 2019 was night and day. He noted he previously opined her incompetent in September of 2019. On April 13, 2020, Dr. Lewis filed a report with the court opining that Ms. Hassan had regained the capacity to proceed. He noted her competency is contingent upon continued compliance with psychotropic medication and abstinence from alcohol and drugs. He noted her history of absconding after being discharged into the community.

Subsequently DHS provisionally discharged Ms. Hassan to the community. Ms. Hassan's mental health decompensated rapidly after her release and she was re-hospitalized at Forensic Mental Health. After achieving psychiatric stability she was again discharged to the community and subsequently re-hospitalized. Believing that Ms. Hassan was no longer competent to proceed, defense counsel requested a contested hearing. The matter was set for a hearing on June 8th. However, this hearing was delayed due to the Pandemic, as Forensic Mental Health was unable to allow transport of Ms. Hassan to the Hennepin County Government Center for a hearing. Ms. Hassan was subsequently released to the community and a hearing was held on August 6, 2020.

During the hearing defense counsel, Lisa Skrzeczkoski, testified that since her release from Forensic Mental Health Ms. Hassan has been unable to remember conversations with her from the day before and overall has been unable to have rational discussions about her case. Ms. Skrzeczkoski testified that on the day of the hearing, in discussions with defense counsel, Ms. Hassan did not understand what a witness was nor was she able to communicate what counsel had explained to her just minutes earlier. After hearing testimony, the Court took the matter under advisement and entered an order on September 4, 2020, finding Ms. Hassan incompetent to proceed.

Subsequently a competency evaluation, dated March 1, 2021, was filed by Stephanie Bruss, Psy.D., LP, on behalf of Hennepin Psychological Services. The evaluation offered an opinion of incompetent to proceed. The parties did not contest this opinion and a finding of incompetency was

entered by the court on March 9, 2021. Dr. Bruss completed a six-month competency review evaluation filed with the court on August 30, 2021, offering an opinion of competent. The Defendant contests this opinion and argues that the Defendant remains incompetent to proceed.

In preparing her most recent evaluation, Dr. Bruss interviewed Ms. Hassan on August 19, 2021, via video. During the forty-five-minute interview, Ms. Hassan was located at her group home residence in Mankato. Dr. Bruss noted Ms. Hassan was calm, pleasant, oriented, and no major symptoms of mental illness were observed. Dr. Bruss testified that Ms. Hassan appeared psychiatrically stable. Dr. Bruss reviewed updated records from AMRTC and Ms. Hassan's current community psychiatric providers at Blue Earth Mental Health. Records from May of 2021 to August of 2021 indicated that since Ms. Hassan's provisional discharge from AMRTC to the group home she has been devoid of psychiatric symptoms, has been compliant with medications and has abstained from substance use, except for one incident in July of 2021. Records show medication compliance since July 13, 2021. Dr. Bruss noted that in previous competency evaluations Ms. Hassan had not been medication compliant. Dr. Bruss provided the same diagnoses as in her past evaluations: Schizoaffective Disorder vs. Bipolar 1 Disorder with Psychotic Features and multiple substance abuse disorders.

Regarding competency, Dr. Bruss opined that Ms. Hassan appeared to understand the nature of her charges and that she had a basic understanding of the roles of court personnel. Ms. Hassan expressed that she trusts her attorney. She stated she understood that the judge is "the boss" and will listen to both sides before making decisions. When discussing potential penalties, like probation, she correctly described probation (e.g., "have to check on you every month, check on your place, show up every month, give your number, address, have an officer check on you.") She also said someone can be "arrested" if they violate probation. Additionally, she appeared to understand the serious nature of the charges and expressed fear of the consequences she would face if convicted. She was able to state that a guilty plea means, "that you did the crime" and a plea of not guilty means "I didn't do the crime." When asked how she might want to proceed with her case, Ms. Hassan was able to offer various ideas, which were logical, self-serving, and well-reasoned. For example, when asked about a hypothetical plea bargain that involved

probation, she stated she does not want to be on probation because “I want to bring my husband and my mom here, I don’t want probation, if I do probation I cannot go out of the country.” Ms. Hassan was at times preoccupied with not wanting any punishment at all, yet she was able to acknowledge the possibility of having a punishment and incarceration. However, Dr. Bruss agreed that Ms. Hassan was not able to express a more in depth understanding of the pros and cons of going to trial versus accepting a plea bargain.

Dr. Bruss noted that Ms. Hassan does have some limitations in understanding and that redirection and rephrasing was necessary during her interview, noting there were occasions when she had to repeat or re-word questions as Ms. Hassan did not seem to understand what she was asking. This was most notable when she would respond in English before the interpreter had a chance to assist. With the questions re-worded, and with the assistance of the interpreter, Ms. Hassan was generally able to answer questions relevantly. Dr. Bruss noted, that in contrast to prior evaluations, Ms. Hassan was able to engage in productive discussions. Dr. Bruss testified that her previous concerns regarding possible cognitive impairment were likely due to substance use and that historically there are not diagnoses of cognitive impairment nor did she have these concerns during the latest interviews.

In reaching this opinion, however, Dr. Bruss did not discuss competency concerns with defense counsel. Nor did she speak with the staff at Ms. Hassan’s group home or with her case manager concerning her current functioning or the daily supports that she requires. At the request of defense counsel, Dr. Bruss re-interviewed Ms. Hassan a few days prior to the contested hearing. Dr. Bruss testified this conversation did not alter her opinion of competency, stating she believes Ms. Hassan continues to demonstrate psychiatric stability and an understanding of the legal proceedings. Dr. Bruss explained the difference in Ms. Hassan’s presentation and understanding from the prior evaluation. She testified that during the August 2021 interview and on the day of the competency hearing, Ms. Hassan was the most stable she has ever seen her. She attributes the restoration to competency to medication compliance and abstaining from substance use. Dr. Bruss’s competency opinion offered to the court is that Ms. Hassan has a simplistic but rational understanding of the court process and that her reasoning does not appear to

be influenced by psychiatric symptoms. Dr. Bruss opined that with redirection and rephrasing information in simple terms Ms. Hassan should have the ability to rationally consult with counsel and participate in her defense.

Dotti Lynch, Ms. Hassan's Hennepin County Behavioral Health Case manager testified on behalf of Ms. Hassan. Ms. Lynch explained that Ms. Hassan requires placement in an Adult Foster Care facility where she has 24/7 supervision. She requires assistance with medication and money management, hygiene, assistance with opening mail and completing paperwork, and other basic life and problem-solving skills. Ms. Lynch explained that Ms. Hassan has difficulty retaining information between conversations. She also must use simplistic terms and re-explain many things multiple times. Ms. Lynch believes that Ms. Hassan does have the ability to make some very simple decisions on her own, such as what to eat, but she does not have the ability to follow rules, maintain a schedule, nor does she possess rational decision-making abilities.

Defense counsel, Lisa Skrzeczkoski testified regarding the difficulties she has communicating with her client. Ms. Skrzeczkoski has been a public defender for sixteen years and has a master's degree in social work. She has represented Ms. Hassan since 2018 and typically speaks to her at least once per week. In her experience, Ms. Hassan has been unable to retain the information she explains to her from one conversation to another. Ms. Hassan ruminates and focuses on her housing situation and counsel must repeat the same conversation over and over. Ms. Skrzeczkoski explained, in the 3 years of representing Ms. Hassan, she has never been able to get past the basics of explaining the charges and move onto other issues in the case. Ms. Skrzeczkoski explained that the skills she frequently uses with other clients, simplifying legal terms and rephrasing, have not worked in her consultation with Ms. Hassan. Her answers are always non-responsive and tangential. They have never been able to discuss possible defenses or witnesses. She does not believe Ms. Hassan would have the ability to testify on her own behalf. While defense counsel agrees that presently Ms. Hassan is psychiatrically stable, she does not believe she has the ability to consult with counsel or participate in her defense.

LEGAL 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. This rule codifies the well-settled test for competency established by the Supreme Court. *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960); *Drope v. Missouri*, 420 U.S. 162, 171-172, 95 S.Ct. 896, 903-904, 43 L.Ed.2d 103 (1975). Thus, to be competent, a defendant must be able to (1) consult with a lawyer with a reasonable degree of rational understanding; (2) otherwise assist in the defense, (3) have a rational understanding of the criminal proceedings and (4) have a factual understanding of the proceedings. 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 case. Foremost, throughout the criminal proceedings the trial court must be mindful of its protective duty to ensure that a defendant is competent to proceed. See *State v. Bauer*, 245 N.W.2d 848, 852 (Minn. 1976) (ruling that the court should have conducted further inquiry into the important matter of defendant’s competency). It is the State’s burden, by a preponderance of the evidence, to prove that a defendant is competent. *State v. Curtis*, 921 N.W.2d 342, 348 (2018).

In the Court’s order dated September 4, 2020, the Court concurred with Dr. Lewis that at the time his report was filed in April of 2020, prior to Ms. Hassan’s provisional discharge to the community, she likely was competent to proceed. After her release into the community, Ms. Hassan’s mental health significantly decompensated due to non-compliance with medication and a return to substance use. For these reasons, the Court entered a finding of incompetency. Since that time, Dr. Bruss has had the ability to evaluate Ms. Hassan twice over the course of six months. In her first evaluation filed in March of 2021, she offered an opinion of incompetent, noting that while Ms. Hassan demonstrated some factual understanding of her charges and the legal system, she did not have a rational understanding of her cases, the seriousness of her case, or the ability to consult with her attorney. Dr. Bruss also noted that if

testimony was required, Ms. Hassan would not have the capacity to relevantly answer questions posed by either party. Dr. Bruss subsequently evaluated Ms. Hassan in August of 2021 and found her presentation significantly improved to the extent that she now offers an opinion of competent. The Court finds Dr. Bruss's opinion that Ms. Hassan has been restored to competency persuasive. Dr. Bruss has detailed evidence establishing that Ms. Hassan's ability to understand the proceedings and relevantly respond to questions has shown marked improvement. Dr. Bruss's ability to rationally communicate with Ms. Hassan regarding her case and the legal process was significantly improved from prior evaluations. Ms. Hassan is psychiatrically stable. The Court recognizes, as noted by Dr. Bruss, that counsel's consultation with Ms. Hassan will require re-phrasing and repeat explanations. The Court recognizes this presents significant challenges to defense counsel, but these challenges do not render Ms. Hassan incompetent. The Court will need to allow defense counsel opportunities to recess during proceedings to have the time to explain the proceedings and consult with her client.

Based on the totality of the above noted facts, the Court finds that the State has proven by the greater weight of the evidence that Ms. Hassan is able to rationally consult with counsel, understand the proceedings, and participate in her defense. Therefore, the Court finds that the defendant, Ms. Hassan, is **COMPETENT**.

By the Court,

Dated: 2/25/2022



Lisa K. Janzen
Judge of District Court

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,

Plaintiff,

vs.

Angelica Denise Schaeffer, aka Angelica
Denise Nunn

Defendant.

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

MNCIS No: 27-CR-22-20311; 27-CR-21-6862; 27-CR-22-15357; 27-CR-21-18888; 27-CR-22-682; 27-CR-22-5177; 27-CR-21-22606; 27-CR-21-19939; 27-CR-21-2501; 27-CR-21-764; 27-CR-20-20192; 27-CR-20-11079; 27-CR-20-3597; 27-CR-20-2738; 27-CR-19-27920; 27-CR-19-19979; 27-CR-19-4444; 27-CR-20-3244; 27-CR-21-1978; 27-CR-21-1977; 27-CR-19-19167; 27-CR-22-20033; 27-CR-22-17934.

This matter came before the undersigned Judge on October 26, 2022. Mehek Mahsood, Esq., Assistant Hennepin County Attorney, represented the plaintiff on the felony matters. Defendant appeared out of custody and was represented by Holly Frame, Esq., 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 was charged in MNCIS file 27-CR-20-3244 with Theft - Take/Use/Transfer Movable Prop - No Consent (Felony) arising from an incident alleged to have occurred on December 19, 2019; MNCIS file 27-CR-21-1977 with Theft - Take/Use/Transfer Movable Prop - No Consent (Felony) arising from an incident alleged to have occurred on December 5, 2020; MNCIS file 27-CR-21-1978 with Theft - Take/Use/Transfer Movable Prop - No Consent (Felony) arising from an incident alleged to have occurred

on December 9, 2020; MNCIS file 27-CR-22-20033 with Theft – Take/Use/Transfer Movable Prop – No Consent (Felony) arising from an incident alleged to have occurred on October 25, 2021; and MNCIS file 27-CR-22-20311 with Theft – Take/Use/Transfer Movable Prop – No Consent (Gross Misdemeanor) and Drugs – 5th Degree – Possess Schedule 1, 2, 3, 4 – Not Small Amount Marijuana (Gross Misdemeanor) arising from an incident alleged to have occurred on October 9, 2022.

2. On December 26, 2022, for Rule 20.01 competency purposes, Judge Anna Andow found probable cause to believe that the above-enumerated felony and gross misdemeanor offenses were committed and that Defendant committed them.
3. Defendant was born on January 28, 1978.
4. On August 15, 2022, Judge Jennifer L. Standfield ordered that Defendant undergo an evaluation to assess Defendant's competency to proceed in Court File Number 02-CR-21-1254, pursuant to Minn.R.Crim.P. 20.01.
5. Dr. Paul Reitman, Ph.D., L.P., F.A.C.D.E., reviewed Defendant's records in Court File Number 02-CR-21-1254 reviewed Defendant's records, interviewed Defendant, and filed a written report on August 29, 2022 with the Anoka County District Court in Court File Number 02-CR-21-1254. Through his written report, Dr. Reitman 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.
6. A review hearing was held on September 19, 2022 and Anoka County District Court Judge Kevin Mueller determined 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.

7. The above-enumerated parties to the above-captioned matters appeared in Hennepin County District Court on October 26, 2022. Counsel for the State requested that the Court adopt the conclusions of law of the Anoka County District Court in Court File Number 02-CR-21-1254 that pursuant to Minn. R. Crim. P. 20.01, Defendant is presently incompetent to stand trial. Counsel for the Defendant agreed to proceeding in this manner.
8. The Court entered findings on the record adopting the findings and conclusions of the Anoka County District Court in Court File Number 02-CR-21-1254 that pursuant to Minn. R. Crim. P. 20.01, Defendant is presently incompetent to stand trial.

CONCLUSIONS OF LAW

Defendant is presently incompetent to stand trial. The misdemeanor charges in Court File Numbers 27-CR-19-4444; 27-CR-19-19167; 27-CR-19-19979; 27-CR-19-27920; 27-CR-20-2738; 27-CR-20-3597; 27-CR-20-11079; 27-CR-20-20192; 27-CR-21-764; 27-CR-21-2501; 27-CR-21-6862; 27-CR-21-18888; 27-CR-21-19939; 27-CR-21-22606; 27-CR-22-682; 27-CR-22-5177; 27-CR-22-15357; and 27-CR-22-17934 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.

Mehek Mahsood, Esq., Assistant Hennepin County Attorney – Criminal Division;

Holly Frame, Esq., Assistant Hennepin County Public Defender.

3. Prepetition Screening shall provide copies of the Rule 20 Competency Evaluation, the criminal Complaints, and the underlying police reports along with its written recommendation to the Hennepin County Attorney's Office – Adult Services Division.
4. Defendant is ordered to cooperate with the civil commitment process including appearing at all court appearances in the civil and criminal cases.
5. 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.
6. 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.
7. 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.

8. 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 24, 2022 at 1:30 p.m.. 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. Holly Frame, Esq., Assistant Hennepin County Public Defender;
 - c. Mehek Mahsood, Esq., Assistant Hennepin County Attorney;
9. A copy of this Order, the Rule 20.01 Competency Evaluation, the criminal complaints, and the underlying police reports shall be delivered via email to the Prepetition Screening Program of Hennepin County's Human Services and Public Health Department.

BY THE COURT:



DATED: October 27, 2022

Anna Andow
Judge of District Court
Fourth Judicial District

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
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Defendant.Case Numbers: 27-CR-18-19274
27CR-20-423

The above-entitled matter came before Lisa K. Janzen, Judge of District Court, on August 6, 2020, for an evidentiary hearing upon the Defense's objection to the competency opinion rendered by Dr. Jason Lewis of State Forensic Services and filed with the court on April 13, 2020. Andrew Johnson, Assistant Hennepin County Attorney, appeared for the State. Lisa Skrzeczkoski, appeared on behalf of the Defendant, Ifrah Hassan, who was personally present. Jason Lewis, PhD, LP, of State Operated Forensic Services testified and the court received his report dated April 13, 2020 and his Curriculum Vitae as exhibits. The court also received, as Exhibit 1, a packet of 105 pages of documents, reports and evaluations reviewed by Dr. Lewis in completing his report. The court took the matter under advisement. Based upon the arguments presented and all the files and records herein, the Court orders as follows:

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

PROCEDURAL HISTORY AND FINDINGS OF FACT

In file number 27-CR-18-19274 Ms. Hassan is charged with one count of Threats of Violence arising from an incident alleged to have occurred on June 27, 2018. On 8/28/18 the court found Ms. Hassan incompetent to stand trial. Ms. Hassan was subsequently committed as Mentally Ill and Chemically Dependent. Findings of incompetency based on subsequent evaluations were also entered on this file in February 2019 and October of 2019.

Subsequently, Ms. Hassan was charged in file 27-CR-20-423 with 2nd Degree Aggravated Robbery from an incident alleged to have occurred on January 3, 2020. On January 7, 2020 probable cause was found and a Rule 20.01 evaluation was ordered. Dr. Shannon Garrity completed a 20.01 evaluation of the defendant which was filed February 12, 2020, opining that Ms. Hassan was not competent. Dr. Garrity noted previous diagnoses of Schizophrenia and Schizoaffective Disorder, as well as prior civil commitments, numerous hospitalizations and facility placements. Dr. Garrity noted that during the interview Ms. Hassan demonstrated unusual behaviors. While she appeared to understand basic aspects of her charges and courtroom proceedings, her disorganization of thought and difficulty tracking the content of the interview were of sufficient severity to render her incompetent to proceed. This finding was entered on February 18, 2020.

Ms. Hassan was again civilly committed and admitted to the State Forensic Mental Health Program (formerly Competency Restoration) on February 26th. Ms. Hassan responded favorably to psychotropic medication and participation in treatment groups during her hospitalization. Her psychiatric provider noted in late March that Ms. Hassan was psychiatrically stable and did not appear to be experiencing symptoms of psychosis or delusional ideation.

Dr. Lewis met with Ms. Hassan on April 7, 2020 at Forensic Mental Health Program. Due to the Pandemic, interpreter services were only available via a telephonic service. Over a two day period Dr. Lewis was unable to connect with this service. Ms. Hassan requested that the interview proceed without the services of an interpreter. During the interview Ms. Hassan's memory functioning appeared grossly intact and she did not present with impairment of attention or concentration. She did not demonstrate

difficulty tracking the discussion. Ms. Hassan acknowledged a history of auditory and visual hallucination and paranoid ideation but acknowledged that her symptoms of psychosis stopped when she began taking her medication. Dr. Lewis noted that she did not present with symptoms of psychosis, disorganized thought or delusional ideation. Dr. Lewis provided diagnoses of Schizoaffective Disorder and Substance Use Disorders. Dr. Lewis indicated Ms. Hassan demonstrated adequate factual understanding of the legal system and the charge against her. She also demonstrated an ability to rationally consult with her attorney. She was aware of the roles of courtroom personnel, trial procedures and her rights in the criminal justice system. She was unable to adequately define a plea bargain. She expressed a willingness to work with defense counsel. Dr. Lewis noted that her presentation during the April 2020 interview and his interview with her in September of 2019 was night and day. He noted he previously opined her incompetent in September of 2019. On April 13, 2020, Dr. Lewis filed a report with the court opining that Ms. Hassan had regained the capacity to proceed. He noted her competency is contingent upon continued compliance with psychotropic medication and abstinence from alcohol and drugs. He noted her history of absconding after being discharged into the community.

Subsequently DHS provisionally discharged Ms. Hassan to the community. Ms. Hassan's mental health decompensated rapidly after her release and she was re-hospitalized at Forensic Mental Health. After achieving psychiatric stability she was again discharged to the community and subsequently re-hospitalized. Believing that Ms. Hassan was no longer competent to proceed, defense counsel requested a contested hearing. The matter was set for a hearing on June 8th. However, this hearing was delayed due to the Pandemic, as Forensic Mental Health was unable to allow transport of Ms. Hassan to the Hennepin County Government Center for a hearing. Ms. Hassan was subsequently released to the community and a hearing was held on August 6, 2020.

During the hearing defense counsel, Lisa Skrzeczkoski, testified that since her release from Forensic Mental Health Ms. Hassan has been unable to remember conversations with her from the day before and overall has been unable to have rational discussion about her case. Ms. Skrzeczkoski testified that on the day of the hearing, in discussions with defense counsel, Ms. Hassan did not understand what

a witness was nor was she able to communicate what counsel had explained to her just minutes earlier. She testified the only thing Ms. Hassan can say when discussing her case is that her charge is “Aggravated Robbery with a maximum of 15 years and a \$30,000 fine.”

LEGAL 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.

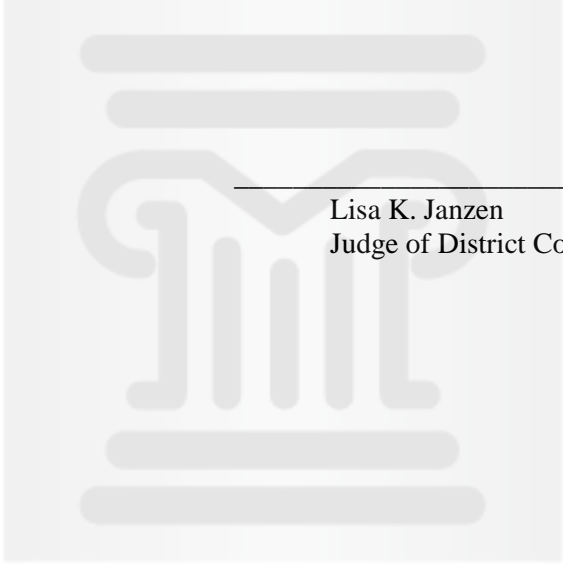
The court concurs with Dr. Lewis that at the time his report was filed in April of 2020 Ms. Hassan likely was competent to proceed. However, since that time Ms. Hassan’s mental health has significantly decompensated such that she is presently not competent to proceed. Ms. Hassan was found incompetent by the courts over ten times between the years 2009 and 2016. Additionally since 2018 at least 4 competency evaluations have opined incompetent. She has been civilly committed multiple times, but historically has only been stabilized over short periods of time and rapidly decompensates once discharged into the community. Once in the community she is not compliant with her medication and resumes chemical use. Competency is fluid. It appears that since the filing of Dr. Lewis’s opinion in April of 2020 Ms. Hassan has not been compliant with psychotropic medication and has been re-hospitalized on multiple occasions. Additionally, the court finds defense counsel’s testimony persuasive that her client currently lacks the ability to rationally consult with her attorney and understand the legal proceedings.

Based on the totality of the above noted facts, the court finds that the State has not proven by the greater weight of the evidence that Ms. Hassan is competent. Rather, the court finds the greater weight of

the evidence demonstrates Ms. Hassan is not able to rationally consult with counsel or participate in her defense. Therefore the court finds that the defendant, Ms. Hassan, is **NOT COMPETENT**.

By the Court,

Dated: 9/4/2020



Lisa K. Janzen
Judge of District Court

MINNESOTA
JUDICIAL
BRANCH

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**Ifrah Abdull Hassan,
Defendant.Case Numbers: 27-CR-18-19274
27CR-20-423; 27-CR-21-5661

The above-entitled matter came before Lisa K. Janzen, Judge of District Court, on December 16, 2021, and January 28, 2022, for a competency hearing. Andrew Johnson, Assistant Hennepin County Attorney, appeared for the State. Lisa Skrzeczkoski appeared on behalf of the Defendant, Ifrah Hassan, who was personally present. Stephanie Bruss, Psy.D., LP, testified and the court received her report dated August 30, 2021 (Ex. 2) and her Curriculum Vitae (Ex. 1). The Defendant also provided the testimony of Dotti Lynch, Ms. Hassan's Behavioral Health Case Manager and the testimony Lisa Skrzeczkoski, defense counsel. The Court took the matter under advisement. Based upon the arguments presented and all the files and records herein, the Court orders as follows:

1. Defendant is **COMPETENT** to proceed.

PROCEDURAL HISTORY AND FINDINGS OF FACT

In file number 27-CR-18-19274 Ms. Hassan is charged with one count of Threats of Violence arising from an incident alleged to have occurred on June 27, 2018. On August 28, 2018, the Court found Ms. Hassan incompetent to stand trial. Ms. Hassan was subsequently committed as Mentally Ill and Chemically Dependent. Findings of incompetency based on subsequent evaluations were also entered on this file in February 2019 and October of 2019.

Subsequently, Ms. Hassan was charged in file 27-CR-20-423 with 2nd Degree Aggravated Robbery from an incident alleged to have occurred on January 3, 2020. On January 7, 2020, probable cause was found and a Rule 20.01 evaluation was ordered. Dr. Shannon Garrity completed a 20.01 evaluation of the defendant which was filed February 12, 2020, opining that Ms. Hassan was not competent. Dr. Garrity noted previous diagnoses of Schizophrenia and Schizoaffective Disorder, as well as prior civil commitments, numerous hospitalizations, and facility placements. Dr. Garrity noted that during the interview Ms. Hassan demonstrated unusual behaviors. While she appeared to understand basic aspects of her charges and courtroom proceedings, her disorganization of thought and difficulty tracking the content of the interview were of sufficient severity to render her incompetent to proceed. This finding was entered on February 18, 2020.

Ms. Hassan was again civilly committed and admitted to the State Forensic Mental Health Program (formerly Competency Restoration) on February 26, 2020. Ms. Hassan responded favorably to psychotropic medication and participation in treatment groups during her hospitalization. Her psychiatric provider noted in late March that Ms. Hassan was psychiatrically stable and did not appear to be experiencing symptoms of psychosis or delusional ideation.

Dr. Lewis met with Ms. Hassan on April 7, 2020, at the Forensic Mental Health Program. Due to the Pandemic, interpreter services were only available via a telephonic service. Over a two day period Dr. Lewis was unable to connect with this service. Ms. Hassan requested that the interview proceed without the services of an interpreter. During the interview Ms. Hassan's memory functioning appeared grossly intact and she did not present with impairment of attention or concentration. She did not demonstrate difficulty tracking the discussion. Ms. Hassan acknowledged a history of auditory and visual hallucination and paranoid ideation but acknowledged that her symptoms of psychosis stopped when she began taking her medication. Dr. Lewis noted that she did not present with symptoms of psychosis, disorganized thought or delusional ideation. Dr. Lewis provided diagnoses of Schizoaffective Disorder and Substance Use Disorders. Dr. Lewis indicated Ms. Hassan demonstrated adequate factual understanding of the legal system and the charge against her. She also demonstrated an ability to

rationally consult with her attorney. She was aware of the roles of courtroom personnel, trial procedures and her rights in the criminal justice system. She was unable to adequately define a plea bargain. She expressed a willingness to work with defense counsel. Dr. Lewis noted that her presentation during the April 2020 interview and his interview with her in September of 2019 was night and day. He noted he previously opined her incompetent in September of 2019. On April 13, 2020, Dr. Lewis filed a report with the court opining that Ms. Hassan had regained the capacity to proceed. He noted her competency is contingent upon continued compliance with psychotropic medication and abstinence from alcohol and drugs. He noted her history of absconding after being discharged into the community.

Subsequently DHS provisionally discharged Ms. Hassan to the community. Ms. Hassan's mental health decompensated rapidly after her release and she was re-hospitalized at Forensic Mental Health. After achieving psychiatric stability she was again discharged to the community and subsequently re-hospitalized. Believing that Ms. Hassan was no longer competent to proceed, defense counsel requested a contested hearing. The matter was set for a hearing on June 8th. However, this hearing was delayed due to the Pandemic, as Forensic Mental Health was unable to allow transport of Ms. Hassan to the Hennepin County Government Center for a hearing. Ms. Hassan was subsequently released to the community and a hearing was held on August 6, 2020.

During the hearing defense counsel, Lisa Skrzeczkoski, testified that since her release from Forensic Mental Health Ms. Hassan has been unable to remember conversations with her from the day before and overall has been unable to have rational discussions about her case. Ms. Skrzeczkoski testified that on the day of the hearing, in discussions with defense counsel, Ms. Hassan did not understand what a witness was nor was she able to communicate what counsel had explained to her just minutes earlier. After hearing testimony, the Court took the matter under advisement and entered an order on September 4, 2020, finding Ms. Hassan incompetent to proceed.

Subsequently a competency evaluation, dated March 1, 2021, was filed by Stephanie Bruss, Psy.D., LP, on behalf of Hennepin Psychological Services. The evaluation offered an opinion of incompetent to proceed. The parties did not contest this opinion and a finding of incompetency was

entered by the court on March 9, 2021. Dr. Bruss completed a six-month competency review evaluation filed with the court on August 30, 2021, offering an opinion of competent. The Defendant contests this opinion and argues that the Defendant remains incompetent to proceed.

In preparing her most recent evaluation, Dr. Bruss interviewed Ms. Hassan on August 19, 2021, via video. During the forty-five-minute interview, Ms. Hassan was located at her group home residence in Mankato. Dr. Bruss noted Ms. Hassan was calm, pleasant, oriented, and no major symptoms of mental illness were observed. Dr. Bruss testified that Ms. Hassan appeared psychiatrically stable. Dr. Bruss reviewed updated records from AMRTC and Ms. Hassan's current community psychiatric providers at Blue Earth Mental Health. Records from May of 2021 to August of 2021 indicated that since Ms. Hassan's provisional discharge from AMRTC to the group home she has been devoid of psychiatric symptoms, has been compliant with medications and has abstained from substance use, except for one incident in July of 2021. Records show medication compliance since July 13, 2021. Dr. Bruss noted that in previous competency evaluations Ms. Hassan had not been medication compliant. Dr. Bruss provided the same diagnoses as in her past evaluations: Schizoaffective Disorder vs. Bipolar 1 Disorder with Psychotic Features and multiple substance abuse disorders.

Regarding competency, Dr. Bruss opined that Ms. Hassan appeared to understand the nature of her charges and that she had a basic understanding of the roles of court personnel. Ms. Hassan expressed that she trusts her attorney. She stated she understood that the judge is "the boss" and will listen to both sides before making decisions. When discussing potential penalties, like probation, she correctly described probation (e.g., "have to check on you every month, check on your place, show up every month, give your number, address, have an officer check on you.") She also said someone can be "arrested" if they violate probation. Additionally, she appeared to understand the serious nature of the charges and expressed fear of the consequences she would face if convicted. She was able to state that a guilty plea means, "that you did the crime" and a plea of not guilty means "I didn't do the crime." When asked how she might want to proceed with her case, Ms. Hassan was able to offer various ideas, which were logical, self-serving, and well-reasoned. For example, when asked about a hypothetical plea bargain that involved

probation, she stated she does not want to be on probation because “I want to bring my husband and my mom here, I don’t want probation, if I do probation I cannot go out of the country.” Ms. Hassan was at times preoccupied with not wanting any punishment at all, yet she was able to acknowledge the possibility of having a punishment and incarceration. However, Dr. Bruss agreed that Ms. Hassan was not able to express a more in depth understanding of the pros and cons of going to trial versus accepting a plea bargain.

Dr. Bruss noted that Ms. Hassan does have some limitations in understanding and that redirection and rephrasing was necessary during her interview, noting there were occasions when she had to repeat or re-word questions as Ms. Hassan did not seem to understand what she was asking. This was most notable when she would respond in English before the interpreter had a chance to assist. With the questions re-worded, and with the assistance of the interpreter, Ms. Hassan was generally able to answer questions relevantly. Dr. Bruss noted, that in contrast to prior evaluations, Ms. Hassan was able to engage in productive discussions. Dr. Bruss testified that her previous concerns regarding possible cognitive impairment were likely due to substance use and that historically there are not diagnoses of cognitive impairment nor did she have these concerns during the latest interviews.

In reaching this opinion, however, Dr. Bruss did not discuss competency concerns with defense counsel. Nor did she speak with the staff at Ms. Hassan’s group home or with her case manager concerning her current functioning or the daily supports that she requires. At the request of defense counsel, Dr. Bruss re-interviewed Ms. Hassan a few days prior to the contested hearing. Dr. Bruss testified this conversation did not alter her opinion of competency, stating she believes Ms. Hassan continues to demonstrate psychiatric stability and an understanding of the legal proceedings. Dr. Bruss explained the difference in Ms. Hassan’s presentation and understanding from the prior evaluation. She testified that during the August 2021 interview and on the day of the competency hearing, Ms. Hassan was the most stable she has ever seen her. She attributes the restoration to competency to medication compliance and abstaining from substance use. Dr. Bruss’s competency opinion offered to the court is that Ms. Hassan has a simplistic but rational understanding of the court process and that her reasoning does not appear to

be influenced by psychiatric symptoms. Dr. Bruss opined that with redirection and rephrasing information in simple terms Ms. Hassan should have the ability to rationally consult with counsel and participate in her defense.

Dotti Lynch, Ms. Hassan's Hennepin County Behavioral Health Case manager testified on behalf of Ms. Hassan. Ms. Lynch explained that Ms. Hassan requires placement in an Adult Foster Care facility where she has 24/7 supervision. She requires assistance with medication and money management, hygiene, assistance with opening mail and completing paperwork, and other basic life and problem-solving skills. Ms. Lynch explained that Ms. Hassan has difficulty retaining information between conversations. She also must use simplistic terms and re-explain many things multiple times. Ms. Lynch believes that Ms. Hassan does have the ability to make some very simple decisions on her own, such as what to eat, but she does not have the ability to follow rules, maintain a schedule, nor does she possess rational decision-making abilities.

Defense counsel, Lisa Skrzeczkoski testified regarding the difficulties she has communicating with her client. Ms. Skrzeczkoski has been a public defender for sixteen years and has a master's degree in social work. She has represented Ms. Hassan since 2018 and typically speaks to her at least once per week. In her experience, Ms. Hassan has been unable to retain the information she explains to her from one conversation to another. Ms. Hassan ruminates and focuses on her housing situation and counsel must repeat the same conversation over and over. Ms. Skrzeczkoski explained, in the 3 years of representing Ms. Hassan, she has never been able to get past the basics of explaining the charges and move onto other issues in the case. Ms. Skrzeczkoski explained that the skills she frequently uses with other clients, simplifying legal terms and rephrasing, have not worked in her consultation with Ms. Hassan. Her answers are always non-responsive and tangential. They have never been able to discuss possible defenses or witnesses. She does not believe Ms. Hassan would have the ability to testify on her own behalf. While defense counsel agrees that presently Ms. Hassan is psychiatrically stable, she does not believe she has the ability to consult with counsel or participate in her defense.

LEGAL 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. This rule codifies the well-settled test for competency established by the Supreme Court. *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960); *Drope v. Missouri*, 420 U.S. 162, 171-172, 95 S.Ct. 896, 903-904, 43 L.Ed.2d 103 (1975). Thus, to be competent, a defendant must be able to (1) consult with a lawyer with a reasonable degree of rational understanding; (2) otherwise assist in the defense, (3) have a rational understanding of the criminal proceedings and (4) have a factual understanding of the proceedings. 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 case. Foremost, throughout the criminal proceedings the trial court must be mindful of its protective duty to ensure that a defendant is competent to proceed. See *State v. Bauer*, 245 N.W.2d 848, 852 (Minn. 1976) (ruling that the court should have conducted further inquiry into the important matter of defendant’s competency). It is the State’s burden, by a preponderance of the evidence, to prove that a defendant is competent. *State v. Curtis*, 921 N.W.2d 342, 348 (2018).


In the Court’s order dated September 4, 2020, the Court concurred with Dr. Lewis that at the time his report was filed in April of 2020, prior to Ms. Hassan’s provisional discharge to the community, she likely was competent to proceed. After her release into the community, Ms. Hassan’s mental health significantly decompensated due to non-compliance with medication and a return to substance use. For these reasons, the Court entered a finding of incompetency. Since that time, Dr. Bruss has had the ability to evaluate Ms. Hassan twice over the course of six months. In her first evaluation filed in March of 2021, she offered an opinion of incompetent, noting that while Ms. Hassan demonstrated some factual understanding of her charges and the legal system, she did not have a rational understanding of her cases, the seriousness of her case, or the ability to consult with her attorney. Dr. Bruss also noted that if

testimony was required, Ms. Hassan would not have the capacity to relevantly answer questions posed by either party. Dr. Bruss subsequently evaluated Ms. Hassan in August of 2021 and found her presentation significantly improved to the extent that she now offers an opinion of competent. The Court finds Dr. Bruss's opinion that Ms. Hassan has been restored to competency persuasive. Dr. Bruss has detailed evidence establishing that Ms. Hassan's ability to understand the proceedings and relevantly respond to questions has shown marked improvement. Dr. Bruss's ability to rationally communicate with Ms. Hassan regarding her case and the legal process was significantly improved from prior evaluations. Ms. Hassan is psychiatrically stable. The Court recognizes, as noted by Dr. Bruss, that counsel's consultation with Ms. Hassan will require re-phrasing and repeat explanations. The Court recognizes this presents significant challenges to defense counsel, but these challenges do not render Ms. Hassan incompetent. The Court will need to allow defense counsel opportunities to recess during proceedings to have the time to explain the proceedings and consult with her client.

Based on the totality of the above noted facts, the Court finds that the State has proven by the greater weight of the evidence that Ms. Hassan is able to rationally consult with counsel, understand the proceedings, and participate in her defense. Therefore, the Court finds that the defendant, Ms. Hassan, is **COMPETENT**.

By the Court,

Dated: 2/25/2022



Lisa K. Janzen
Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

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

Court File No. 27-CR-21-20072

Gordon Eugene Sharp,

Defendant.

This matter came before the Honorable Gina M. Brandt on March 14, 2022, for a Contested Omnibus Hearing. Warsame Galaydh, Assistant Hennepin County Attorney, appeared on behalf of the State of Minnesota. Attorneys, Alexander Davis and Laura Pahl appeared on behalf of the defendant, Gordon Eugene Sharp ("Defendant"), who was in custody and present. The hearing was held via zoom on the record. At the hearing, Defense submitted two exhibits to the Court:

- 1) a Trespass Notice Form from August 18, 2021, issued by a Target store located at 1300 West Lake Street, Minneapolis, MN. (Exhibit 1)
- 2) A Minneapolis Police Report related to this incident. (Exhibit 2)

In addition, Defense submitted an unpublished Minnesota Court of Appeals case, *State v. Givins*, A15-0685, 2016 WL 1396686 (Minn. App. Apr. 11, 2016), for the Court's consideration. This matter came under advisement of the court at that time.

BACKGROUND

Defendant is charged with a single count of Burglary – 3rd Degree – Steal/Commit Felony or Gross Misdemeanor, in violation of Minn. Stat. § 609.582.3. Defendant moves this Court to dismiss the Complaint based on a lack of probable cause. Specifically, Defendant argues there is not probable cause for the second element of the offense, entrance without consent, since Mr. Sharp allegedly did not have knowledge of being trespassed from Target. Based on all the files, records, and proceedings herein, the Court now enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On October 1, 2021, Minneapolis Police were dispatched to a reported theft at a Target store located at Lake Street in Minneapolis, Hennepin County.
2. According to the Minneapolis Police report submitted to the Court, once on the scene, Officers learned from a Lake Street Target employee that a known suspect had stolen several packages of socks and underwear. The stolen goods were worth around \$100.00.
3. The known suspect, Gordon Eugene Sharp, had previously been trespassed from the Lake Street Target store on August 18, 2021. A copy of the Trespass Notice form was received by this Court at Mr. Sharp's Contested Omnibus hearing. (Ex. 1). Of note, the Trespass Notice Form is not signed by the receiving party, Mr. Sharp, but instead simply states "handcuffed" on the signature line.
4. While on the scene at the Lake Street Target Store, Officers learned from the reporting party that Mr. Sharp had left the immediate area after the theft. Mr. Sharp departed

on a pink “Nice Ride” bike. Officers also received the following description of Mr. Sharp, “described as a Latino male, late 20s- early 30s, 5'06, medium build, wearing a fur bomber hat, gray t-shirt and black jeans.” Officers then provided their contact information to the Target employee and departed the scene.

5. On October 4, 2021, Officer Kara Parker was assigned to investigate the October 1, 2021, Theft incident at Target. Through the course of her investigation, Officer Parker learned Mr. Sharp was subsequently arrested on another Theft charge at a different Target store in Uptown Minneapolis on October 26, 2021.
6. Upon continuing further investigation into the October 1, 2021, incident, Officer Parker garnered further information on Mr. Sharp’s later behavior that same day. Lake Street Target employees reported that following the departure of the Minneapolis law enforcement officers to the initial incident on October 1st, they observed Mr. Sharp return twice that day and commit two additional reported thefts. Each theft involved multiple bottles of Tide. The total reported loss of those thefts was \$239.88.
7. In addition, it should be noted that the Minneapolis Police report indicates the thefts in this case represent only a small fraction of Mr. Sharp’s incidents with Target stores. Multiple Target stores have documented at least forty-six theft incidents involving Mr. Sharp, occurring between June 15, 2021, and October 9, 2021.

CONCLUSIONS OF LAW

Mr. Sharp is charged with a single count of Burglary – 3rd Degree – Steal/Commit Felony or Gross Misdemeanor, in violation of Minn. Stat. § 609.582.3., which states:

Whoever enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building, either directly or as an accomplice, commits burglary in the third degree and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Defendant argues there is a lack of probable cause to support the second element of the offense, entrance without consent. Specifically, Defendant argues he did not have proper knowledge of the trespass notice issued by the Target in this case, which would have denied him entrance. Defendant argues there is a knowledge requirement in Minn. Stat. § 609.582.3. Further, without sufficient evidence that Defendant received proper notice of his status as “trespassed,” the Formal Complaint must be dismissed.

A Complaint must be supported by probable cause. *State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010). When determining whether probable cause exists, the Court looks to whether it is more likely than not that Defendant committed the charged offense. *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976); *Lopez*, 778 N.W.2d at 703 (probable cause arises “where facts have been submitted to the district court showing a reasonable probability that the person committed the crime.”). A Complaint and supporting affidavits must establish sufficient facts and

elements to justify the charged offense. *State v. Oman*, 121 N.W. 2d 616, 619 (Minn. 1963). When examining a probable cause challenge, a district court may review the entire record, including police reports and the Complaint. *State v. Dunagan*, 521 N.W. 2d 355, 356 (Minn. 1994); Minn. R. Crim. P. 11.04 subd. 1 (c). To establish probable cause, the facts contained in the record must be sufficient to survive a motion for directed verdict at a trial. *Lopez*, 778 N.W. 2d at 704; *State v. Rud*, 359 N.W. 2d 573, 579 (Minn. 1984). The State need not prove every element of the offense beyond a reasonable doubt, factual determinations are reserved for the jury. *State v. Clark*, 134 N.W. 2d 857, 879-871 (Minn. 1965); *Florence*, 239 N.W. 2d at 896. The district court must view the evidence in the light most favorable to the State, with every inference fairly drawn from the evidence drawn in favor of the State. *State v. Peck*, 773 N.W. 2d 768, 782 (Minn. 2009).

Minnesota Statute § 609.582.3, requires a Defendant “to enter(s) a building without consent.” Defendant argues a knowledge requirement is contained in Minnesota Statute § 609.582.3. In support of this argument, Defendant provides a single unpublished Minnesota Court of Appeals opinion, *State v. Givins*, A15-0685, 16 WL 1396686 (Minn. App. Apr. 11, 2016). In *Givins*, the Court reasoned that trespass, which is a lesser included offense of burglary, requires an individual intentionally enter the building. *Id.* The Court noted “intentionally” inherently requires knowledge. Based on this logic, the Court stated, “Therefore, burglary also requires knowledge of lack of consent.” *Id.* While Defense focused on the knowledge requirement suggested by *Givins*, it is important to note, *Givins* also states “Knowledge is usually proved through circumstantial evidence.” *Id.* In *Givins*,

the court proceeds to note “we have long held that the proof of knowledge may be made by circumstantial evidence.” *Id.*

Here, Defendant argues that the trespass notice issued by Lake Street Target is insufficient to prove Defendant had knowledge of his status as trespasser. In support of this claim, Defendant points out the August 18, 2021, trespass notice was not signed by Defendant, but instead, simply states “handcuffed” on the signature line. Defendant does not point to any statute, or case, which states for a trespass notice to be valid, it must be signed by the receiving party. The police report, also received into evidence (Ex. 2), indicates Target stores have documented forty-six thefts committed by Defendant between June 15th, 2021, and October 9th, 2021. This information includes at least three instances at Lake Street Target on October 1, 2021, as well as the initial incident on August 18, 2021. Clearly, there is sufficient circumstantial evidence that Mr. Sharp had notice of his status as trespasser from Lake Street Target. The State has provided a trespass notice (Ex. 1), as well as police report (Ex. 2) showing that Mr. Sharp had multiple incidents involving Target stores. While he did not sign the trespass notice issued by Lake Street Target on August 18, 2021, this fact does not on its own warrant dismissal of the Complaint. The fact that the trespass notice (Ex. 1) reads “handcuffed” does not itself negate proof of Defendant’s knowledge of the notice. Exhibit 1 has several indicators that imply the notice was given directly to Mr. Sharp. These indicators all contribute to comprise circumstantial evidence. For example, the bottom of Exhibit 1 states “Make two (2) copies: one copy for the person receiving the notice, one copy for your records.” The State need not prove every element of the offense beyond a reasonable doubt, factual determinations are reserved for the jury.

Florence, 239 N.W. 2d at 896. Whether Mr. Sharp did in fact have knowledge of his status as trespasser is a fact issue for a jury and does not form a sufficient basis for dismissal based on lack of probable cause.

CONCLUSION

Based on the Formal Complaint, trespass notice (Ex. 1), and Minneapolis Police report (Ex. 2), and viewing this evidence in the light most favorable to the State as the standard instructs, there is sufficient evidence to establish probable cause for the charge of Burglary in the Third Degree. Therefore, Defendant's motion to dismiss is denied.¹

ORDER

1. Defendant's Motion to Dismiss is hereby **DENIED**.
2. Parties shall appear for Jury Trial on **April 11, 2022, at 9:00 a.m.**

BY THE COURT:

Dated: March 16, 2022



Gina M. Brandt
Judge of District Court

¹ It should be noted that at the Contested Omnibus hearing on March 14, 2022, Mr. Sharp attempted to raise the issue of mistaken identity. This issue appears to have been raised because Mr. Sharp is currently held in custody under the names, "Eugene Sharp" and "Eugene Sharp, Jr." However, Defense did not provide any evidence, nor provide any support for this claim. Without proof to bolster this claim, this Court will not examine any issue of mistaken identity. Therefore, that issue will not be addressed further.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,

Plaintiff,

vs.

Angelic Denise Schaeffer, aka Angelic
Denise Nunn

Defendant.

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

MNCIS No: 27-CR-22-20311; 27-CR-21-6862; 27-CR-22-15357; 27-CR-21-18888; 27-CR-22-682; 27-CR-22-5177; 27-CR-21-22606; 27-CR-21-19939; 27-CR-21-2501; 27-CR-21-764; 27-CR-20-20192; 27-CR-20-11079; 27-CR-20-3597; 27-CR-20-2738; 27-CR-19-27920; 27-CR-19-19979; 27-CR-19-4444; 27-CR-20-3244; 27-CR-21-1978; 27-CR-21-1977; 27-CR-19-19167; 27-CR-22-20033; 27-CR-22-17934.

This matter came before the undersigned Judge on October 26, 2022. Mehek Mahsood, Esq., Assistant Hennepin County Attorney, represented the plaintiff on the felony matters. Defendant appeared out of custody and was represented by Holly Frame, Esq., 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 was charged in MNCIS file 27-CR-20-3244 with Theft – Take/Use/Transfer Movable Prop – No Consent (Felony) arising from an incident alleged to have occurred on December 19, 2019; MNCIS file 27-CR-21-1977 with Theft – Take/Use/Transfer Movable Prop – No Consent (Felony) arising from an incident alleged to have occurred on December 5, 2020; MNCIS file 27-CR-21-1978 with Theft – Take/Use/Transfer Movable Prop – No Consent (Felony) arising from an incident alleged to have occurred

on December 9, 2020; MNCIS file 27-CR-22-20033 with Theft – Take/Use/Transfer Movable Prop – No Consent (Felony) arising from an incident alleged to have occurred on October 25, 2021; and MNCIS file 27-CR-22-20311 with Theft – Take/Use/Transfer Movable Prop – No Consent (Gross Misdemeanor) and Drugs – 5th Degree – Possess Schedule 1, 2, 3, 4 – Not Small Amount Marijuana (Gross Misdemeanor) arising from an incident alleged to have occurred on October 9, 2022.

2. On December 26, 2022, for Rule 20.01 competency purposes, Judge Anna Andow found probable cause to believe that the above-enumerated felony and gross misdemeanor offenses were committed and that Defendant committed them.
3. Defendant was born on January 28, 1978.
4. On August 15, 2022, Judge Jennifer L. Standfield ordered that Defendant undergo an evaluation to assess Defendant's competency to proceed in Court File Number 02-CR-21-1254, pursuant to Minn.R.Crim.P. 20.01.
5. Dr. Paul Reitman, Ph.D., L.P., F.A.C.D.E., reviewed Defendant's records in Court File Number 02-CR-21-1254 reviewed Defendant's records, interviewed Defendant, and filed a written report on August 29, 2022 with the Anoka County District Court in Court File Number 02-CR-21-1254. Through his written report, Dr. Reitman 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.
6. A review hearing was held on September 19, 2022 and Anoka County District Court Judge Kevin Mueller determined 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.

7. The above-enumerated parties to the above-captioned matters appeared in Hennepin County District Court on October 26, 2022. Counsel for the State requested that the Court adopt the conclusions of law of the Anoka County District Court in Court File Number 02-CR-21-1254 that pursuant to Minn. R. Crim. P. 20.01, Defendant is presently incompetent to stand trial. Counsel for the Defendant agreed to proceeding in this manner.
8. The Court entered findings on the record adopting the findings and conclusions of the Anoka County District Court in Court File Number 02-CR-21-1254 that pursuant to Minn. R. Crim. P. 20.01, Defendant is presently incompetent to stand trial.

CONCLUSIONS OF LAW

Defendant is presently incompetent to stand trial. The misdemeanor charges in Court File Numbers 27-CR-19-4444; 27-CR-19-19167; 27-CR-19-19979; 27-CR-19-27920; 27-CR-20-2738; 27-CR-20-3597; 27-CR-20-11079; 27-CR-20-20192; 27-CR-21-764; 27-CR-21-2501; 27-CR-21-6862; 27-CR-21-18888; 27-CR-21-19939; 27-CR-21-22606; 27-CR-22-682; 27-CR-22-5177; 27-CR-22-15357; and 27-CR-22-17934 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.

Mehek Mahsood, Esq., Assistant Hennepin County Attorney – Criminal Division;

Holly Frame, Esq., Assistant Hennepin County Public Defender.

3. Prepetition Screening shall provide copies of the Rule 20 Competency Evaluation, the criminal Complaints, and the underlying police reports along with its written recommendation to the Hennepin County Attorney's Office – Adult Services Division.
4. Defendant is ordered to cooperate with the civil commitment process including appearing at all court appearances in the civil and criminal cases.
5. 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.
6. 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.
7. 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.

8. 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 24, 2022 at 1:30 p.m.. 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. Holly Frame, Esq., Assistant Hennepin County Public Defender;
 - c. Mehek Mahsood, Esq., Assistant Hennepin County Attorney;
9. A copy of this Order, the Rule 20.01 Competency Evaluation, the criminal complaints, and the underlying police reports shall be delivered via email to the Prepetition Screening Program of Hennepin County's Human Services and Public Health Department.

BY THE COURT:



DATED: October 27, 2022

Anna Andow
Judge of District Court
Fourth Judicial District

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,

Plaintiff,

vs.

Angelic Denise Schaeffer, aka Angelic
Denise Nunn

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**FINDINGS OF FACT,
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CONCLUSIONS OF LAW

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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.

Mehek Mahsood, Esq., Assistant Hennepin County Attorney – Criminal Division;

Holly Frame, Esq., Assistant Hennepin County Public Defender.

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

BY THE COURT:



DATED: October 27, 2022

Anna Andow
Judge of District Court
Fourth Judicial District

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

v.

Peter Jahan Lehmeyer,
Defendant.

Judge Michael K. Browne
Case Type: Criminal

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING DEFENDANT'S
COMPETENCY TO PROCEED**

Case File Numbers:
27-CR-23-21403, 27-CR-24-385

APPEARANCES

The above-entitled matter came before the Honorable Michael K. Browne, Judge of District Court, on April 11, 2024, for an evidentiary hearing upon the Defense's objection to the incompetency opinion rendered by Elizabeth J. Barbo, Ph.D., L.P., in her report dated February 1, 2024. The Court is chambered at the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, Minnesota.

Steven M. Tallen, Esq., appeared for the State. Julia M. Inz, Assistant Hennepin County Public Defender, appeared on behalf of the Defendant. Mr. Lehmeyer (the Defendant) appeared out of custody.

EVIDENCE IN THE PROCEEDING

The Court received two exhibits into evidence: Dr. Elizabeth J. Barbo's Report dated February 1, 2024 (Ex. 1)¹; and Dr. Elizabeth J. Barbo's Curriculum Vitae (Ex. 2). Mr. Lehmeyer and Dr. Elizabeth J. Barbo testified. After hearing arguments of counsel, the Court took the matter of Defendant's competency under advisement.

PROCEDURAL HISTORY

The Defendant, Mr. Lehmeyer, is charged with one count of driving after cancellation – inimical to public safety (Gross Misdemeanor) arising from an incident alleged to have occurred on October 6, 2023 (27-CR-23-21403). Mr. Lehmeyer is also charged with one count of driving after cancellation – inimical to public safety (Gross Misdemeanor) arising from an incident alleged to have occurred on December 29, 2023 (27-CR-24-385).

On October 9, 2023, Mr. Lehmeyer made his first appearance in Court, where the Court determined that he qualified for the services of a public defender. Also on October 9, 2023, the Honorable Edward Wahl, Judge of District Court, ordered Defendant to undergo an Evaluation for Competency to Proceed (Rule 20.01). Judge Wahl found probable cause and ordered a Rule 20.01 evaluation to determine if Mr. Lehmeyer was competent to proceed.

¹ Attorney Inz objected to the admission of Exhibit 1 on behalf of Mr. Lehmeyer. However, the Court overruled this objection and Exhibit 1 was received into evidence.

Elizabeth J. Barbo, Ph.D., L.P., was assigned to complete the evaluation of the Defendant. She filed her report on February 1, 2024. Dr. Barbo opined that Mr. Lehmeyer was incompetent, as she concluded that his “refusal to participate in the examination is likely due to his untreated mental illness.” Ex. 1, p. 8. Dr. Barbo provided the diagnoses of unspecified schizophrenia spectrum and other psychotic disorder rule out: substance induced psychotic disorder vs. delusional disorder; stimulant use disorder (methamphetamine), severe; alcohol use disorder, severe; cannabis use disorder, severity unknown; opioid use disorder, severity unknown; and borderline personality disorder. *Id.* Additionally, she concluded that “[Mr. Lehmeyer] may be an appropriate candidate for civil commitment if he is determined to be incompetent to proceed.” *Id.* at 9.

The hearing on competency was held on April 11, 2024, at which time the Defense argued that the Court should find Mr. Lehmeyer competent to proceed with the criminal trial. Based upon the arguments presented and all the files and records herein, the Court orders as follows:

FINDINGS OF FACT

The Court’s findings are based on the information and opinions provided by Elizabeth J. Barbo, Ph.D., L.P. in her Rule 20 Evaluation Report dated February 1, 2024 (Ex. 1), and on the testimony of Mr. Lehmeyer and Dr. Elizabeth J. Barbo.

It is the position of the Defense that Mr. Lehmeyer has the requisite capacity to proceed in his criminal matters. Mr. Lehmeyer's testimony did indicate some understanding of court proceedings. For instance, he testified to his understanding of the following: penalties; having a jury trial or a bench trial; that the prosecutor could present evidence (which he noted generally occurs during the Omnibus hearing); and plea negotiations. However, throughout his testimony, Mr. Lehmeyer required several prompts from the Court to answer the questions posed by his attorney without changing topic. It appeared difficult for him to follow these instructions and he often required redirection. Mr. Lehmeyer frequently rambled (after answering the question) about information unrelated to the question itself. For instance, in one response he began referencing a publication of the Supreme Court. After Mr. Lehmeyer's testimony concluded, he also raised his hand to speak again during other parts of the proceeding.

The Court next received testimony from Dr. Barbo. Dr. Barbo credibly opines that Mr. Lehmeyer refused to participate in his evaluation due to mental illness and that Mr. Lehmeyer was incompetent to proceed. She credibly testified that her opinion had not changed. Dr. Barbo indicates that she has evaluated Mr. Lehmeyer as part of the Rule 20.01 process at least eight times, the first of which occurred in June 2018. Ex. 1, pp. 5–6, 8. Dr. Barbo conducted the most recent evaluation of Mr. Lehmeyer on February 1, 2024, which is the subject of these proceedings. *Id.* at 1.

Dr. Barbo credibly testified that Mr. Lehmeyer presented as very intense and neutral in affect during their initial discussion, but that he then became more agitated and irritable. Significantly, Mr. Lehmeyer “would not discuss his use of alcohol or substances, any mental health treatment, or any additional personal information,” which Dr. Barbo notes is consistent with previous interviews. *Id.* 3. Despite Mr. Lehmeyer’s refusal to discuss his substance use or mental health treatment, Dr. Barbo’s report details a lengthy history of both substance use and mental health concerns beginning in April 1996, including several attempts at treatment programs, hospital presentations, and a stayed civil commitment. *Id.* at 3–5. Additionally, Dr. Barbo credibly testified that Mr. Lehmeyer left at least five voicemails with Psychological Services that were more than five minutes in length. *See also id.* at 7. In these voicemails, Mr. Lehmeyer spoke quickly about irrelevant information, before “signing off.” *Id.* Dr. Barbo also discussed these voicemails in her report, noting that there were seven voicemails in total all received between the hours of midnight and 3:00 a.m. on October 31, 2023. *Id.* “In these voicemails, [Mr. Lehmeyer] talked about court rules and statutes that are unrelated to his case and do not appear to exist and then provided his contact information.” *Id.*

Dr. Barbo offered the following diagnoses of Mr. Lehmeyer: unspecified schizophrenia spectrum and other psychotic disorder rule out: substance induced psychotic disorder vs. delusional disorder; stimulant use disorder (methamphetamine), severe; alcohol use disorder, severe; cannabis use disorder, severity unknown; opioid use disorder, severity unknown; and borderline personality disorder. *Id.* at 8. She concluded that “[b]ased on the available data it [is] my opinion that Mr. Lehmeyer’s refusal to participate in the examination is likely due to his untreated mental illness.” *Id.* Dr. Barbo believes that Mr. Lehmeyer is experiencing symptoms of mental illness. *Id.* Specifically, Dr. Barbo reports that it is her belief that Mr. Lehmeyer’s refusal to participate in the evaluation is “related to his irrational thought processes and his delusional belief systems.” *Id.* She further reports that it could not be confirmed whether Mr. Lehmeyer was using substances, but notes that “[Mr. Lehmeyer] has had similar symptoms even when he had been free from substance use for an extended period of time.” *Id.* Ultimately, Dr. Barbo states that “[w]ithout formal intervention to assist with medication management and sobriety it is unlikely [Mr. Lehmeyer] will be restored in the future.” *Id.* She opines that Mr. Lehmeyer “may be an appropriate candidate for civil commitment if he is determined to be incompetent to proceed.” *Id.* at 9.

In summary, the Court finds the opinion and report of Dr. Barbo to be most persuasive regarding Mr. Lehmeyer's competency to proceed. The Court's observations of Mr. Lehmeyer, including his testimony, mirrored Dr. Barbo's observations of Mr. Lehmeyer in the time leading up to and during her evaluation, namely discussing irrelevant information. The Court is concerned that although Mr. Lehmeyer was able to exhibit some understanding of court proceedings in his testimony, this understanding may be superficial as he then turned to irrelevant information, such as that listed in his voicemails. Mr. Lehmeyer also continued to appear symptomatic, including displaying pressured speech. Given these behaviors, the Court finds that Mr. Lehmeyer lacks the ability to rationally consult with counsel, understand the proceedings, and participate in his defense. Therefore, the Court finds that the Defendant has not met his burden of proof.

CONCLUSIONS OF LAW

"A defendant has a due process right not to be tried or convicted of a criminal charge if he or she is legally incompetent." *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). Rule 20.01 of the Minnesota Rules of Criminal Procedure requires the district court to find a defendant not competent unless the greater weight of the evidence shows that the defendant is competent to proceed. 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. Moreover, factfinders, including district courts, are not required to accept an expert's testimony or recommendations. In a criminal case involving a mental-illness defense, the Minnesota Supreme Court noted that "the factfinder is not bound by expert psychiatric testimony and may reject it entirely, even when the only experts who testify support the defendant's assertion of a mental-illness defense." *State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016).

Foremost, throughout the criminal proceedings the trial court must be mindful of its protective duty to ensure that a defendant is competent to proceed. *See State v. Bauer*, 245 N.W.2d 848, 852 (Minn. 1976) (ruling that the district court should have conducted further inquiry into the important matter of defendant's competency). The defendant bears the burden of proof in a contested competency proceeding under MINN. R. CRIM. P. 20.01 when the defendant asserts their own competence. *See State v. Thompson*, 988 N.W.2d 149, 158 (Minn. 2023).

The evidence presented shows that Dr. Barbo has diagnosed Mr. Lehmeyer with unspecified schizophrenia spectrum and other psychotic disorders, along with several other mental illnesses. Based on the totality of the information before the Court, the Court finds that the greater weight of the evidence demonstrates that because of the mental illnesses diagnosed by Dr. Barbo, Mr. Lehmeyer presently does not have the ability to rationally consult with counsel, understand the proceedings, and participate in his defense. The Court found both Dr. Barbo's written reports, in combination with her testimony, to be highly credible and persuasive. As a result, under *Anderson*, the Defense has not met its burden of proving, by a greater weight of the evidence, that Mr. Lehmeyer is competent.

ORDER

Therefore, the Court finds that the Defendant, Mr. Lehmeyer, is **INCOMPETENT** to proceed with trial.

IT IS SO ORDERED.

BY THE COURT



MINNESOTA
JUDICIAL
BRANCH

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,

Plaintiff,

vs.

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Denise Nunn

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5. Dr. Paul Reitman, Ph.D., L.P., F.A.C.D.E., reviewed Defendant's records in Court File Number 02-CR-21-1254 reviewed Defendant's records, interviewed Defendant, and filed a written report on August 29, 2022 with the Anoka County District Court in Court File Number 02-CR-21-1254. Through his written report, Dr. Reitman 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.
6. A review hearing was held on September 19, 2022 and Anoka County District Court Judge Kevin Mueller determined 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.

7. The above-enumerated parties to the above-captioned matters appeared in Hennepin County District Court on October 26, 2022. Counsel for the State requested that the Court adopt the conclusions of law of the Anoka County District Court in Court File Number 02-CR-21-1254 that pursuant to Minn. R. Crim. P. 20.01, Defendant is presently incompetent to stand trial. Counsel for the Defendant agreed to proceeding in this manner.
8. The Court entered findings on the record adopting the findings and conclusions of the Anoka County District Court in Court File Number 02-CR-21-1254 that pursuant to Minn. R. Crim. P. 20.01, Defendant is presently incompetent to stand trial.

CONCLUSIONS OF LAW

Defendant is presently incompetent to stand trial. The misdemeanor charges in Court File Numbers 27-CR-19-4444; 27-CR-19-19167; 27-CR-19-19979; 27-CR-19-27920; 27-CR-20-2738; 27-CR-20-3597; 27-CR-20-11079; 27-CR-20-20192; 27-CR-21-764; 27-CR-21-2501; 27-CR-21-6862; 27-CR-21-18888; 27-CR-21-19939; 27-CR-21-22606; 27-CR-22-682; 27-CR-22-5177; 27-CR-22-15357; and 27-CR-22-17934 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.

Mehek Mahsood, Esq., Assistant Hennepin County Attorney – Criminal Division;

Holly Frame, Esq., Assistant Hennepin County Public Defender.

3. Prepetition Screening shall provide copies of the Rule 20 Competency Evaluation, the criminal Complaints, and the underlying police reports along with its written recommendation to the Hennepin County Attorney's Office – Adult Services Division.
4. Defendant is ordered to cooperate with the civil commitment process including appearing at all court appearances in the civil and criminal cases.
5. 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.
6. 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.
7. 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.

8. 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 24, 2022 at 1:30 p.m.. 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. Holly Frame, Esq., Assistant Hennepin County Public Defender;
 - c. Mehek Mahsood, Esq., Assistant Hennepin County Attorney;
9. A copy of this Order, the Rule 20.01 Competency Evaluation, the criminal complaints, and the underlying police reports shall be delivered via email to the Prepetition Screening Program of Hennepin County's Human Services and Public Health Department.

BY THE COURT:



DATED: October 27, 2022

Anna Andow
Judge of District Court
Fourth Judicial District