

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

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

Court File No. 27-CR-22-25151

State of Minnesota,

Plaintiff,

vs.

Nicole Loretta Kelm,

Defendant.

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

This matter came before the undersigned Referee of District Court on December 5, 2023. The hearing was held remotely using the Zoom internet platform. Tom Arneson, Assistant Hennepin County Attorney, represented the plaintiff. Defendant was not present and was represented by Susan Herlofsky, Assistant Hennepin County Public Defender.

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

**FINDINGS OF FACT**

1. Defendant (date of birth 10/17/1985), was charged in MNCIS file 27-CR-22-25151 with Assault – 2<sup>nd</sup> Degree (Felony) arising from an incident alleged to have occurred on December 14, 2022. On October 13, 2023, Judge Michael Burns found probable cause to believe that the offense was committed and that Defendant committed it.
2. On October 13, 2023, Judge Michael Burns ordered that Defendant undergo an evaluation to assess Defendant's competency to proceed in this matter pursuant to Minn.R.Crim.P. 20.01.
3. Dr. Joseph Korevec, Psy.D., L.P., Psychological Services of Hennepin County District Court, reviewed Defendant's records, interviewed Defendant, and filed a written report with this Court.
4. Dr. Joseph Korevec, Psy.D., L.P., Psychological Services of Hennepin County District Court, opined that Defendant, due to mental illness or cognitive impairment, lacks the ability to rationally consult with counsel; or lacks the ability to understand the proceedings or participate in the defense. This opinion was uncontested by either party.

## **CONCLUSIONS OF LAW**

Defendant is presently incompetent to stand trial.

## **ORDER**

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

Joshua Luger, Assistant Hennepin County Attorney – Criminal Division;

Amanda Brodhag, Assistant Hennepin County Public Defender

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

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

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

13. Defendant's next appearance in Hennepin County District Court – Criminal Division on this matter and status review of Defendant's competence to proceed is June 4, 2024. One week prior to that date, reports regarding Defendant's competency and mental status shall be e-filed and e-served to:

- a. Fourth Judicial District Court – 4thCriminalRule20 email list;
- b. Amanda Brodhag, Assistant Hennepin County Public Defender (amanda.brodhag@hennepin.us);
- c. Joshua Luger, Assistant Hennepin County Attorney (joshua.luger@hennepin.us);
- d. Hennepin County Attorney's Office – Adult Services Division (if a commitment is ordered);
- e. The Commitment Defense Panel attorney appointed to represent Defendant by the Fourth Judicial District Court – Probate/Mental Health Division.

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

Order Recommended By:



Borer, George  
Dec 13 2023 8:24 AM

Referee of District Court

BY THE COURT:



Browne, Michael  
Dec 13 2023 12:46 PM

Judge of District Court