

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
PROBATE/MENTAL HEALTH DIVISION  
JUDICIAL DISTRICT: FOURTH

Court File No. 27-CR-23-3198

State of Minnesota,

Plaintiff,

v.

Aaron Dashaun Cherry,

Defendant.

**ORDER DENYING MOTION FOR RELEASE,  
AND DENYING MOTION FOR AMENDED  
CONDITIONAL RELEASE ORDER**

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This matter came before the Court on February 6, 2024, on a Motion by Counsel for the Defendant to Modify the Conditions of Release of the Defendant from the Hennepin County Adult Detention Center, and to remove the bail requirement imposed on Defendant by the Court's Conditional Release Order dated February 10, 2023. The hearing took place remotely using Zoom video. The Defendant appeared at the hearing in custody from the Hennepin County Adult Detention Center and was represented by attorneys Chelsea Knutson and Susan Herlofsky, Assistant Hennepin County Public Defenders. The State of Minnesota was represented by Assistant Hennepin County Attorney Thomas Arneson.

The matter was referred for hearing to the undersigned District Court Referee, and based on the Referee's recommendations, the Court makes the following:

**FINDINGS OF FACT**

1. Defendant (date of birth 08/19/1994) was charged in Court File No. 27-CR-23-3198 with felony Violation of No Contact Order Within 10 years of the first of two convictions, in violation of Minn. Stat. § 629.75.2(d)(1); and felony Domestic Assault in violation of

Minn. Stat. § 609.2242.4. Both charges arise from an incident alleged to have occurred on February 8, 2023.

2. In the course of the proceedings, concerns were raised over Defendant's competence and a Rule 20 evaluation was ordered by the Court on March 7, 2023. The psychologist who evaluated the Defendant opined that he was competent to proceed on the criminal charges. Defendant's Counsel challenged that opinion and a contested competency hearing was subsequently held on November 17, 2023. On December 6, 2023, an Order was issued by this Court finding that Defendant was incompetent to proceed on the criminal charges. A motion for review of the December 6, 2023 Order was made by the State's Counsel, and by oral and written Orders dated January 31, 2024, the motion was denied and the December 6, 2023 Order was confirmed.
3. Defense Counsel notes that under Minn. R. Crim. P. Rule 6.02, subd. 4, the Court must review conditions of release on request of any party. Defense Counsel also directs the Court to Minn. R. Crim. P. Rule 6.02, subd. 1 which reads, in part, that a person must be released on personal recognizance or an unsupervised appearance bond "unless a court determines that release will endanger the public safety or will not reasonably assure the defendant's appearance."
4. When determining release, the Court looks to Minn. R. Crim. P. Rule 6.02, subd. 2 which sets forth the factors the court must consider in determining conditions of release. When analyzing the case under this Rule the Court finds as follows:
  - a. The nature and circumstances of the offense charged are serious. Both charges are felonies and both allegedly involved a victim with a prior DANCO against the Defendant.
  - b. As to the weight of the evidence, the Defendant is presumed innocent, however, the Court notes that on March 6, 2023, the Honorable Judge William H. Koch found

probable cause to believe that the offenses were committed and that the Defendant committed them.

- c. No information was presented to the Court about the Defendant's family ties.
- d. No information was presented to the Court about employment, but it appears from the Hennepin County Pre-Trial Evaluation filed February 10, 2023, that Defendant was unemployed prior to the alleged offenses.
- e. No information was presented to the Court about Defendant's financial resources.
- f. As for Defendant's character and mental condition, the Court has most recently found that he is incompetent to stand trial on the criminal charges.
- g. The Pre-Trial Evaluation indicates that Defendant's length of residence in the community prior to the offense was only one year.
- h. The Defendant has several prior felony convictions including Domestic Assault, Fourth Degree Assault, Domestic Strangulation, Armed Robbery, and Unlawful Possession of a Weapon by a Felon. Additionally, the Defendant has misdemeanor convictions of Trespass, Fleeing by means other than a motor vehicle, Violation of a No Contact Order, and Disorderly Conduct.
- i. The Pre-Trial Evaluation indicates 10 failures to appear beginning in January 2020 and ending in May 2022. Additionally, Defendant's Pre-Trial Score on his Pre-Trial Evaluation was 76, a very high score.
- j. No evidence was presented regarding any prior flight to avoid prosecution by the Defendant.
- k. The victim's safety is of concern to the Court especially given the Defendant's history of violence.
- l. No evidence was presented as to the jeopardy of any other person's safety.
- m. The Court has serious concerns about the public safety because of the Defendant's conduct and his past behavior.

5. When weighing all of the Rule 6.02, subd. 2 factors as a whole, the Court finds that Defendant's release without appropriate safeguards in place will endanger the victim, the public safety, and will likely result in the Defendant's nonappearance for future hearings.
6. Defense Counsel notes that Defendant has been in custody since his arrest on February 8, 2023. While this may be an extended period of time in custody, the Court does not find this to be cruel or unusual punishment. Here, the Court determined that Defendant is a risk to public safety and is not assured that he would appear in the future. He is charged with violating a no contact order within 10 years of the first of two convictions and domestic assault. The Defense Motion also indicates that Defendant is alleged to have violated his probation by having contact with the victim and by failing to remain law abiding, which would have occurred when Defendant was out of custody. MNCIS Index No. 29. The Court is also not assured that Defendant would attend future Court appearances, given his history of bench warrants issued as a result of failing to appear. The Court has not been presented with any reasonable alternatives for release of the Defendant that would not result in jeopardizing public safety or his future Court appearances.
7. Defense Counsel indicates that even though the Defendant has been found incompetent due to cognitive impairment, he is not receiving treatment while in the Jail. However, it is not the Court's role to find an appropriate placement or treatment for the Defendant. It is the Court's role to protect the safety of the victim and the public, and to ensure the Defendant is not a flight risk. Neither the State nor the Defense has presented a reasonable suggestion for a conditional release of the Defendant that would satisfy these concerns.
8. Following the Court's finding that the Defendant was incompetent to stand trial, the State declined to pursue civil commitment of the Defendant. Defense Counsel argues that the

Defendant is unconstitutionally being held indefinitely and solely on account of his incompetence to stand trial. The Court finds, however, that the Defendant is being held based on the risk he poses to public safety and the lack of assurance that he would attend future Court appearances, and not because of his incompetence to stand trial. Additionally, the Defendant is not being held indefinitely. He is scheduled to appear before this Court for a six-month review hearing on June 11, 2024, demonstrating that the Court continues to review his status.

9. Defense Counsel states that the placements which have been contacted will not accept the Defendant without an evaluation which cannot be done at the Jail. The Court also acknowledges Defense Counsel's suggestion that this Court issue an Order to transport the Defendant to 1800 Chicago for evaluation, care and treatment. The Court notes, however, that this facility is not a secure facility which would not serve to protect the victim or the general public. The court does not find this proposal to be an adequate condition for release. Defense Counsel also argues that the Defendant has an address in the community, however, the address is a post office box and not a residence. While the Defendant cannot be punished for failing to have a residence, this is another factor which leads the Court to find it likely that the Defendant would not be able to be reached for future court appearances. Additionally, Hennepin County Probation will not supervise the Defendant if released because he has been found incompetent to stand trial on the criminal charges. Therefore, the Court finds that a release of the Defendant under the proposal made by Defense Counsel will endanger the public safety and will not reasonably assure the Defendant's appearance at future hearings.

10. Since no appropriate conditions have been presented to the Court for the Defendant's conditional release, the Court finds the current bail and conditions of release to be appropriate and declines to amend its Conditional Release Order to allow for release of Defendant from the Adult Detention Center.

**ORDER**

**IT IS ORDERED:**

1. The Defendant's Motion to remove the bail requirements imposed by the Court and release him from the Hennepin County Adult Detention Center without bail, but on conditions, is DENIED.
2. The conditions of release set forth in the Conditional Release Order filed February 10, 2023, shall remain in effect.
3. Copies of this Order shall be served upon Counsel for the parties including:

Joshua Luger, Assistant Hennepin County Attorney;

Thomas Arneson, Assistant Hennepin County Attorney;

Chelsea Knutson, Assistant Hennepin County Public Defender; and

Susan Herlofsky, Assistant Hennepin County Public Defender.

Order Recommended by:

**BY THE COURT:**

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Referee of District Court

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Judge of District Court